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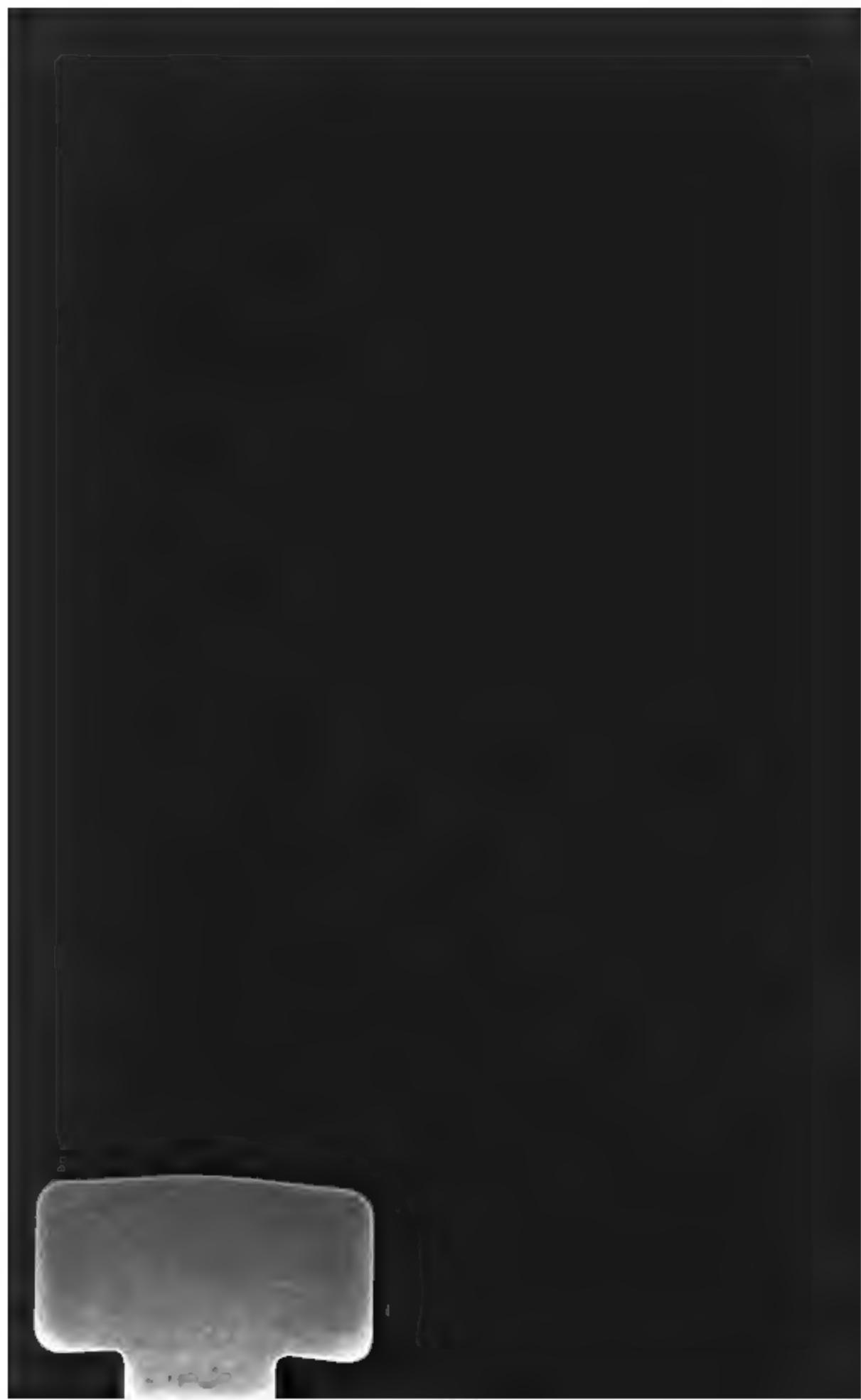
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T H E L A W
RELATING TO
COLLIERIES AND COLLIERs.

LONDON: PRINTED BY
SPOTTISWOODE AND CO., NEW-STREET SQUARE
AND PARLIAMENT STREET

COLLIERIES AND COLLIER'S :

A HANDBOOK OF
THE LAW AND LEADING CASES
RELATING THERETO.

BY
JOHN COKE FOWLER, ESQ.

DEPUTY CHAIRMAN OF THE GLAMORGANSHIRE SESSIONS, AND
STIPENDIARY MAGISTRATE OF SWANSEA.

THIRD EDITION,
WITH THE COAL MINES REGULATION ACT OF 1872
AND A NEW PREFACE.



LONDON:
LONGMANS, GREEN, AND CO.
1872.

LONDON : PRINTED BY
SPOTTISWOODE AND CO., NEW-STREET SQUARE
AND PARLIAMENT STREET

PREFACE
TO
THE THIRD EDITION.

It has been thought desirable to publish a new edition of this work, in order to enable purchasers to possess the new Code of Collieries. The alterations made in the law relating to that kind of property by the Act, 35 & 36 Victoria, chapter 76, are so numerous and important, that a work on collieries which does not include the new statute would henceforth be of little service. The whole of the former Act, 23 & 24 Victoria, chapter 151, which was inserted in the two former editions, has been repealed so far as it relates to collieries. The present Act contains new regulations relating to the employment of women, young persons, and children ; prohibits the payment of wages in public-houses ; enacts regulations for weighing the coal gotten ; prohibits single shafts, with certain exceptions ; and regulates the division of

mines into parts. Every mine is to be under the control of a manager, who will not be qualified unless he is registered as the holder of a certificate of competency from examiners to be appointed for the purpose. Returns of various particulars of mines are to be sent to the Inspectors ; also notices of opening and abandoning and of personal changes in the management and ownership of collieries ; provision is made for arbitrations between Inspectors and managers or owners, and for inquests on deaths from accidents in mines. The General Rules are increased in number from fifteen to thirty-one, with a view to insuring the safety of the miners as much as possible. Lastly, it is enacted that, in addition to the former pecuniary penalties, the owner, agent, or manager who is guilty of any offence, personally and wilfully committed, which is likely to endanger the safety of the persons employed, shall be liable to imprisonment, with or without hard labour, for three months. But no prosecution is to be instituted against such owner, agent, or manager before a court of summary jurisdiction except by an Inspector, or with the consent of a Secretary of State.

The above is a slight outline of the provisions of the new code, which comes into operation in Great Britain on the 1st of January, 1873, and in Ireland

in the following year, and comprises mines of coal, of stratified iron-stone, shale and fire-clay.

This statute has been enacted *in favorem vitæ*, and will have the effect of giving more confidence to miners, greatly increasing their safety, and preventing explosions and accidents, so far as human foresight can do so.

THE GNOLL, NEATH:

October 1872.



PREFACE TO THE SECOND EDITION.

THE WANT of a convenient and inexpensive work on the subject comprised in this volume being proved by the rapid sale and exhaustion of the first edition, the book is again offered to the public with many useful additions. The relation of employers and employed has been so considerably affected by the 'Master and Servant Act' of 1867 as to make it expedient to print the statute verbatim, and to notice all the illustrative cases that have been heard and decided upon it. The new Courts of Conciliation and Arbitration, which may be established under the provisions of the 30th and 31st Vict. cap. 105, have been fully described.

The rating of collieries has been the subject of much study and inquiry by the Author. The Union Assessment Act has enlarged the area of rating and altered the method of proceeding, but has not affected the principles on which the rate is to rest. Nor has any important judgment upon the rating of

collieries been obtained from the Superior Courts since the first edition appeared. But the system of Union rating has called many able valuers into this difficult field of calculation, and luminous decisions upon the rating of other kinds of properties have facilitated their labours. In this way some additional light has been thrown upon the subject, and it is hoped that ere long there will be as much uniformity in the received principles and practice of rating collieries, as now prevails in the case of railways, canals, and other property of that nature. The author has laboured to make the chapter on rating as simple and intelligible as the subject permits. He fears it may not be satisfactory to some professional men who hold peculiar theories, but he ventures to hope it may be of use to many proprietors.

It will also be found that considerable additions have been made to the chapters relating to combinations of workmen, and to that on inspection of mines. Both subjects have received useful illustrations and comments in cases decided within the last five years.

The law relating to the responsibility for accidents occurring to colliers in their work has also been more fully explained, and minor additions have also been made to most of the other chapters, so as to embody the very latest decisions of the Courts in this edition. Lastly, some very valuable forms will be found in the Appendix. The first of these additions is a lease of a tract of coal in the North of England. It is perfectly free from the antiquated and cumbrous verbiage

of the old forms. The lease itself comprises the description of the parties to it and the demise. The other parts of the lease are thrown into a Schedule divided into eight sections, relating respectively to the boundaries, liberties, exceptions, rents, provisions relating to rents, covenants by lessee and lessor, and general provisions. The sections are divided into paragraphs, and numbered. By these arrangements any point may be referred to without trouble or delay—an advantage so obvious that this method cannot fail to come into general use. The author is indebted for this form to G. C. Greenwell, Esq., the well-known author of a valuable work on mining. Another lease has been added as a valuable specimen of a modern and well-drawn instrument for the district of South Wales. A form of Proviso for re-entry will also be found, which places that power upon a fair and reasonable basis. An epitome of the French laws relating to mines has been taken from an excellent work, and exhibits the points of difference between the French and English systems. The index has also been much enlarged. The author takes this opportunity of expressing his obligations to W. T. Lewis, Esq., of Aberdare, D. Randall, Esq., of Neath, and Joshua Richardson, Esq., for their kindness in supplying him with information.

THE GNOLL, NEATH:

March, 1869.



INTRODUCTION.

IT is not intended in this work to enter at large upon the abstruse questions of real-property law which are connected with the working, sale, and letting of strata of coal. The work is rather intended as one of convenient reference for non-professional persons who are concerned in collieries, than as a guide to professional men, who are furnished with the best authorities on these subjects. But as in many transactions connected with collieries, business of importance is carried on without professional aid, and as a short and comprehensive statement of the law may be convenient even to professional men, it is proposed to consider as briefly as possible the general rules which govern this kind of property. The laws which govern the relation between the employer and the collier will be discussed somewhat more fully; and the topics of truck, combination, intimidation, rating, and inspection will be treated as fully as practical convenience can require. The leading cases will be referred to, in illustration of the propositions that are advanced, and the statutes that relate to the

various matters under consideration will be embodied in the text, or otherwise referred to. The difficult subject of the rating of collieries has occupied much of the attention of the Author, and he has availed himself of all the information within his reach. The conclusions at which he has arrived are uncertain and unsatisfactory, and the intervention of the Legislature is much to be desired in order to place the rating of this class of property upon one uniform and intelligible basis.

No work has hitherto been published which treats specially of these and other topics comprised in this treatise, to the exclusion of other matters and questions connected with mining for the metallic ores. The great and growing interests involved in coal-mining seem to justify the publication of a work in which those interests alone will be the subjects treated of. The Author fears that imperfections and omissions will be found in it, notwithstanding his anxious desire to make it accurate and clear. He is much indebted to the comprehensive and learned work of Mr. Bainbridge on the Law of Mines, in which the cases connected with mining have been collected down to the time of its publication. But whilst he has availed himself of the learned labours of this and other authors of well-known text-books, he has, at the same time, frequently brought forward some leading case illustrating the matter under consideration, from which the whole or parts of the judgments have been quoted verbatim. This plan has

been followed as much as possible, because it will generally be found that the spirit and meaning of any rule of law is far more easily apprehended and ascertained by reading one luminous judgment on the subject-matter, than by the perusal of short epitomes or analyses of many decisions. As circumstances differ infinitely, so each case and decision will, indeed, have its own value, and present some peculiar modification or distinction. But although no case on any special subject-matter may be safely overlooked, it will generally be found either that the doctrine has been grasped and enunciated as soon as the matter was fairly discussed, and has been acquiesced in as law ever since, or that after a long series of cases, in which doubts are apparent, the discussions and arguments have terminated in a case in which the rule has been clearly and finally laid down. Hence the advantage of finding the leading cases containing the luminous expositions of English law which have from time to time been set forth by a line of great judges from Lord Holt to Lord Campbell.

Magistrates before whom colliers are brought up on charges of misconduct, are often perplexed by the vague and loose nature of the contract of service. In many cases, if a contract exists at all, it can only be implied from the surrounding circumstances. The Author has suggested a form which he conceives may serve to meet the various difficulties which have actually occurred in the enforcement of such contracts, and which might form the heading of a

contract-book to be signed by all new colliers, on entering into service.

Those parts of the work which deal with the topics of underground trespass ; injuries by under-mining ; the rights and easements connected with water ; and barriers and inundations ; have been perused by gentlemen distinguished for their great practical knowledge of colliery operations, and their suggestions have been carefully considered.

The statute 5 and 6 Vict. c. xcix. having been in a great measure superseded or altered by the statute of 1860, has been referred to very briefly, but all the material clauses of the new Act will be found quoted entire.

In the Appendix are inserted several forms of leases, and also a collection of various clauses, which may be used according to circumstances.

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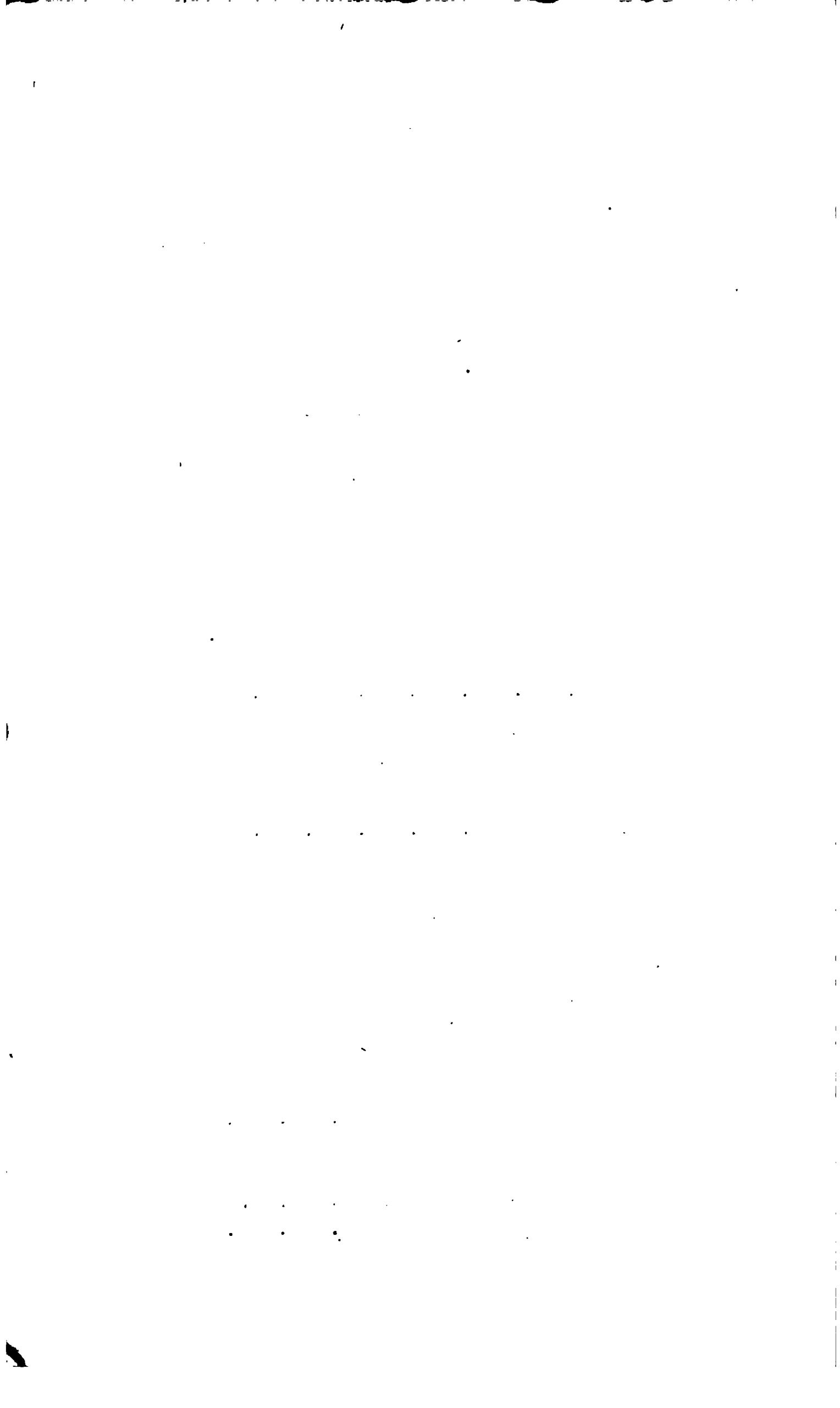
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COLLIERIES AND COLLIER'S.

CHAPTER I.

THE PROPERTY IN COAL.

IT is a general maxim of the common law, that whatever is in a direct line between the surface of any land and the centre of the earth belongs to the owner of the surface. Hence the owner of freehold lands has a right to all the minerals underneath the surface, with the exception of royal mines, which it is needless to refer to further, as the royal prerogative does not clash with the property in coal.

This general rule, however, is capable of being modified by showing a title distinct from that to the surface. It is well known that in mineral districts the ownership of the surface is often vested in one person, and that of the minerals in another. Even one seam of coal under the same surface may belong to one person, and another seam to another. Such a claim to minerals, being adverse to the owner of the surface, must be proved distinctly, when called

in question, either by the production of direct conveyances, or, in the absence of documentary evidence, by proof of acts of ownership and length of possession. But the mere reputation of ownership is not sufficient to rebut the presumption of law in favour of the owner of the surface. It must be accompanied with uniform usage and exercise of the right. But a right of this kind cannot be acquired by prescription, which is applicable only to incorporeal hereditaments. Prescription can confer the right to work minerals, but does not constitute the right of property in the minerals themselves, which are part of the land itself. The case of *Wilkinson v. Proud* (11 M. & W. 33) clearly marks this distinction. It decided that the right to a given substratum of coal lying under a close is a right to land, and cannot be claimed by prescription, though a right to take the coal is different. In that case Mr. Baron Parke said, "The claim set up is a prescriptive right not to take coal in the plaintiff's close, but to part of the soil itself, viz. a given substratum of coal lying under the close, which does not lie in grant, and cannot be claimed by prescription." These acts of ownership must be distinct from those over the surface, in order to support the right to a freehold. But they need not always be exercised in the identical lands that are in question, provided those lands can be shown to be within the operation of a custom prevailing over an ascertained district. The case of *Barnes v. Mawson* (1 Maule & Selwyn, 77) supplies an illustration of this point. It was an action of trover for coals. The question was, whether the lord of a manor was entitled to the

coals under a certain freehold tenement within the manor. He was allowed to show by parol evidence that there was a known distinction within the manor between the "old land" and the "new land," and that the plaintiff's land lay within the boundary of the new land ; and also to show, by evidence of general reputation and acts of taking coal under the lands of other freeholders within the same boundary, that the right to the coals under the plaintiff's land was in the lord.

When the right to the minerals is vested in a person not entitled to the surface, and there has been no adverse possession or establishment of title on the part of any other persons by acts of ownership, the right of possession will be held to continue in the original owner ; and no presumption of waiver or grant will arise from the non-user of the right in favour of the owner of the surface. It has been said that there are many cases where, from non-user of a right, an inference of abandonment might fairly be made ; but that does not apply to such a case as this. It is not generally true that the owner of mines works every mine which he has a right to work, and therefore the relinquishment of the right cannot be presumed from the non-exercise of it. It was well known that mines remain unwrought for generations, and that they are frequently purchased or reserved, not only without any view to immediate working, but for the express purpose of keeping them unwrought until other mines should be exhausted, which might not be for a long period of time.*

* *Seaman v. Vaudrey*, 16 Ves. 390.

The Statute of Limitations, 3 & 4 Will. IV. c. xxvii., does not apply to the mere absence of the exercise of rights of possession by the real owner of mines, but to the adverse possession of others. By this statute the doctrine of non-adverse possession is done away, except in cases provided for by sect. 15 ; and an ejectment must be brought within 20 years after the original right of entry of the plaintiff (or of the party under whom he claims) accrued, whatever be the nature of the defendant's possession.

RIGHT TO MINERALS IN COPYHOLD LANDS.

As the copyholder has now acquired, by Act of Parliament, 21 & 22 Vict. c. xciv., an estate of inheritance in his lands by the process of enfranchisement which he is empowered to effect, the peculiar rights with regard to minerals arising out of this tenure are becoming of less importance. The copyhold tenure is said to be derived from the ancient system of villenage, in which low tenure parts of the demesne lands of lords of manors were held under the feudal system. The villeins held small portions of land at the will of the lord, who might dispossess them whenever he pleased. But the villeins in process of time gained considerable privileges from their lords. For the latter having in many places, time out of mind, permitted their villeins and their children to enjoy their possessions without interruption, in a regular course of descent, the common law, of which custom is the life, gave them title to prescribe against their lords, and on performance of the customary services to hold their lands

in spite of any determination of the lord's will. For though they were said to hold their estates at the will of the lord, yet that is such a will as is agreeable to the custom of the manor, of which the rolls of the manor courts were evidence. And as such tenants had nothing to show for their estates but these rolls, or copies of such entries witnessed by the steward, they were called "tenants by copy of court roll," and their tenure itself a "copyhold."

In the absence of any special custom the general rule seems to be that the right of property in minerals lying on or under land held by this tenure belongs to the lord, while only a possessory interest is vested in the tenant. But neither the lord without the consent of the tenant, nor the tenant without the licence of the lord, may open and work new mines. In his Treatise on Tenures, Lord Chief Baron Gilbert says, p. 327, "It seems to me that a copyholder of inheritance cannot, without a special custom, dig for mines, neither can the lord dig in the copyholder's lands, for the great prejudice he would do to the copyhold estate." The leading case upon this point is that of *Bourne v. Taylor* (10 East, 189), in which it was distinctly laid down that the lord of a manor, as such, has no right, without a special custom, to enter upon the copyholds within his manor, under which there are mines and veins of coal, in order to bore for and work the same; and the copyholder may maintain an action of trespass for so doing. This case was followed by another, *Lewis v. Branthwaite* (2 Barn. & Ad. 437), in which it was decided that, as in copyhold lands, though the property in mines is in the lord, while the possession

of them is in the tenant, the latter may maintain an action of trespass against the owner of an adjoining colliery for breaking and entering the subsoil and taking coal therein, though no trespass be committed on the surface.

But if the minerals are once severed from the inheritance, whether by the copyhold tenant or by any stranger, the lord will be entitled to recover them in an action of trover. They are no longer part of the freehold, but personal chattels belonging to an owner whose right of possession has accrued. "Custom is the life of all tenures by copy," and custom is in fact the evidence of the terms of the grant of the lord. When a custom exists enabling the lord to work the mines, it must be concluded that the possession of the minerals has been reserved to him. But the custom must not exhaust the whole estate of the copyholder without recompense. There can be no doubt that a general claim by the lord to work mines in customary lands without compensation would be held to be invalid.*

With reference to the customary rights of the tenants as to coal, the case of the Duke of Portland *v.* Hill (Law Reports, Equity, p. 765), will be found very valuable. It was laid down that in lands held by copy of court roll according to the custom of the manor the freehold is in the lord, and in the absence of custom (the onus of which lies upon the tenant) the tenant has no right to work the minerals. The existence of a "customary," compiled within the period

* Bainbridge on Mines, 20.

of legal memory, is conclusive evidence against the existence of a custom not mentioned therein. Such a customary recognized the right in the tenants to dig coal for their own uses. Other documents showed that the privilege of digging coal for their own use had been enjoyed by the tenants under the waste, but not under their customary inclosures. There was also evidence of tenants having, during a long period, dug coal in their customary inclosures for sale. It was held by Vice-Chancellor Wood that the custom was restricted to digging in the waste for coal for the tenants' own consumption, and that they had no right of digging under their customary inclosures. In the judgment will be found a vast body of learning on this subject, which may be referred to with great advantage when a dispute on this subject matter occurs.

It has also been decided in the case of *Hilton v. Lord Granville* (5 Q. B. 701, and 13 Law Journal, Q. B. 193), that a prescription in the manor of Newcastle-upon-Tyne for the occupiers or licensees of the collieries situate within that manor to work them under any messuages, dwelling houses, buildings, and lands, part of the said manor, and to dig and make underground all such pits, shafts, &c., under the said messuages, &c., as might be necessary for that purpose, and out of the mines to get the coals and carry them away, doing no more than necessary for the purpose, and paying to the occupiers of the surface of any lands damaged a reasonable compensation for the user of the surface of such lands, for damage done to the surface in working the collieries, but without making compensation for damage occasioned to any messuages, &c.,

is *unreasonable*, and cannot be sustained in law. A similar claim by custom is also invalid. The custom and prescription are equally invalid, whether claimed in respect of copyhold or freehold houses.

This was an action on the case for injury done to two ancient houses, which had sunk and were in danger of falling in consequence of the mining operations. Lord Denman, in delivering the judgment of the court, referred to the case of *Broadbent v. Wilks* (Willes Rep. 360). In that case the custom set up that when the lord or his tenants had sunk coal-pits in the freehold lands of Halton they had been accustomed to cast the earth, &c., coming out of them in heaps on the land *near to such pits*, there to remain, and to place wood there for the use of such pits, and to take and carry away with carts part of the coals so placed there, and to burn and make into cinders other part of the said coals, at his and their free will and pleasure. Chief Justice Willes observed in that case that no custom could be more unreasonable. It might deprive the tenants of the whole profits of the land. In the court above, after another argument, it was again held to be an unreasonable custom. For it laid a great burden on the land of the plaintiff, without any consideration appearing, either public or private. It savoured of an arbitrary power, and might put it in the power of the lord totally to deprive the tenant of the benefit of the land, there being no restriction of time. The word "near" was too vague and uncertain. After thus referring very particularly to that case, Lord Denman continued, "There can be no necessity for showing by a comparison of details that the

custom now pleaded is far more oppressive than that which was thus deliberately condemned. The words 'at the will of the lord' do not, indeed, appear in the present record; but such is the effect of the claim, for the lessee of the duchy and his sub-tenants assume the power of entering into any lands within the manor, and searching for minerals, without any restriction as to time and season, or the mode of occupation or culture. Whatever the lord can reasonably be supposed to have reserved out of his grant, *consistently with that grant*, the usage may adequately prove that he did reserve it. But a claim *destructive of* the subject matter cannot be set up by him; and if the grant could be produced, reserving a right in the lord to deprive his grantee of the enjoyment of the thing granted, such a claim must be rejected as repugnant and absurd. That this prescription or custom has this destructive effect, and so is repugnant and void, appears to us too clear to admit of any illustration by argument."

And a custom for a lord to dig mines under the waste, without leaving any support to the surface or making any satisfaction for the injury done, is bad. It is no defence to say that he has been accustomed for 20 or 40 years to dig under other people's land in the same manner, without making any compensation. This was decided in the case of *Blackett v. Bradley* (31 Law J., Q. B. 65); and the Lord Chief Justice observed that the case of *Hilton v. Granville*, above referred to, has been much shaken in authority, as one of the positions assumed in the reasoning of the Court has been since overruled in the House of Lords, in the

case of *Rowbotham v. Wilson* (6 E. & B. 593; 8 E. & B. 123).

In the Acts for the Enfranchisement of Copyhold Lands, 4 & 5 Vict. xxxv., and 15 & 16 Vict. li., provision is made for securing and settling the mineral rights. By the last statute it is enacted that no enfranchisement shall affect the mineral rights of the lords of manors, or any tenants, without their express consent in writing.

RIGHT TO MINERALS IN COMMONS.

The right of common is the right of taking a profit in the land of another in common with others. *Prima facie* the lord of the manor is entitled to all waste lands within the manor, and it is not essential, in order to support this *prima facie* title, that he should show acts of ownership of such lands. And by the presumption of law the exclusive property in the soil of all common and waste lands of the manor is vested in the lord. Consequently, the right of property in all the minerals in such lands is in him. The commoner has no interest in the soil of the land on which he has a right of common. The right of the lord to the soil of the common lands, in the absence of custom or express grant, is so extensive, that it may even be exercised to the destruction of the herbage, and *pro tanto*, to the loss by the commoners of their privileges. In the case of *Bateson v. Green* (5 T. R. 411), it was held that the right of commoners in a common may be subservient to the right of the lord in the soil: so that the lord may dig clay pits there, or empower others to

do so, without leaving sufficient herbage for the commoners, if such a right can be proved to have been always exercised by the lord. "There is a clear distinction," says a learned author,* "between copyhold lands in which the tenant has the possession, and common lands where the right of possession is wholly vested in the lord. In copyhold lands he claims the right of property in mines as part of his freehold inheritance; but he claims the right to work them by prescription, as they are in the possession of others. In common lands he has never lost possession of any part, and that possession, once absolute, is still sufficient to secure to him the full benefit of his first rights. The right of the commoner to the surface is thus subservient to the right of the lord to take the minerals, but the exercise of that right must be *bonâ fide* and without malice.

"A prescriptive or an actual possessory title, which gives the right to the minerals of a common to the commoners, must, as in other similar cases, be evidenced by distinct acts of ownership."

Where the lord of the manor has stood by for a long period and allowed the tenants to work the mines, and expend large sums of money, the Courts of Equity will not give him an injunction or account against the tenants, but will leave him to his legal remedy. And it is presumed that the lord may lose his claim altogether to any part of the surface or soil of a common by allowing his title to be ignored and not acknowledged by others. If a stranger, for in-

* Bainbridge on Mines, 24.

stance, enters upon a common and there works the minerals without dispute or acknowledgment, he would in due course of time secure a title to work them by prescription, both against the lord and the commoners. The lord may also part with his rights and profits in the common for a valuable consideration, by his own express act. Thus, it appears that the right to the minerals of a common may be vested either in the lord by presumption of law, or in the commoners themselves by prescription, founded on custom or on acts of ownership ; or in strangers by express grant, or by sufficient acts of ownership in the nature of encroachments. By the 2 & 3 Will. IV. c. lxxi. s. 1, it is enacted, that "Claims to right of common, profits à prendre, and other profits (except tithes, rents, and services), shall not be defeated after thirty years' enjoyment, by showing only that such right was first enjoyed prior to that period ; and after sixty years the right shall be absolute, unless it appear that the same was enjoyed by consent or some agreement.

But even when the rights of the lord are not disputed, they may still co-exist with a claim on the part of the commoners to take the minerals. For Lord Coke says, "There be divers other commons, as of estovers, of turbary, of piscary, of digging for coals, minerals, and the like."* But in such cases as admitted claims on the part of the commoners to dig for coals or minerals, there must, by analogy to other similar rights, be some stint and restriction to the

* Coke, Litt. 122 a.

exercise of this right. This point is, however, a very obscure one, and no case has yet been decided which indicates the opinion of the courts on restriction in digging for minerals.

When common lands are inclosed, and no special provision is made to the contrary, the allotments are freehold; but a provision is almost universally made that the allotments shall follow the nature of the tenure of the land in respect of which they are made. If the minerals are not expressly mentioned, it would seem that the several owners will be interested in them according to the nature of the tenure.

In the recent Act for facilitating the inclosure, exchange, and division of common lands, 8 & 9 Vict. c. cxviii. s. 97, it is enacted, that when part of the land to be inclosed shall be converted into a regulated pasture, and the residue shall be allotted in severalty, it shall be lawful for the valuer, having regard to the right of the lord of the manor, as it shall have been ascertained and declared by the provisional order of the Commissioners, and with the consent of the lord of the manor, and a majority in value of the other persons interested; to direct that the rights of the lord of the manor, in and to all or any of the minerals, stone, &c., under such part of the land as shall be converted into regulated pasture shall be reserved to the lord, and all the minerals under the residue to be divided and allotted in severalty, shall become the property of the owners of the respective allotments.

Sect. 98 enacts, that where the right to the minerals under any land inclosed under this Act shall exist as property distinct and separate from the pro-

perty on the surface, and shall not be compensated upon the inclosure, such right, and all auxiliary rights and easements, shall not be affected by the inclosure; and, if the minerals under land so inclosed have been leased as property distinct from the property on the surface, the rights of the lessee shall not be affected by the inclosure.

And by the late Act, 22 & 23 Vict. c. xlvi. s. 1, it is enacted, that on any inclosure where the minerals are reserved to the lord or other person, the provisional order must in future specify whether a right to enter the lands to work minerals is to be reserved, and whether any compensation is to be made for damage to the surface. By sect. 2, the lord, or such other person, and the other interested parties, may agree by what persons such compensation to the allottees, whose surface may be damaged, shall be made, and such agreement is to be part of the award. By sect. 3, when by the provisional order the minerals are reserved to the lord, or such other person, with a right to enter the inclosed lands to work the minerals, it shall be lawful for the lord or such person to do all that is necessary and convenient for that end. By sect. 4, when the compensation is to be made by the owners of the allotments collectively, with or without the lord, or such person, the damages are to be assessed and enforced by two justices in the manner indicated by sects. 5 and 6.

MANORS.

The right to minerals being sometimes connected with manorial rights, a slight sketch of the latter may

be conveniently inserted in this place. The present English manor derives its origin from the feudal system. A manor seems to have been a district of ground held by a lord or great personage who kept to himself such parts of it as were necessary for his own use, which were called demesne lands, and distributed the rest to freehold tenants, to be held of him in perpetuity. Of the demesne lands, again, part was retained in the hands of the lord, for the purposes of his family; other portions were held in villenage, and the residue being uncultivated, was termed the lord's waste, and served for public roads, and for common of pasture for the lord and his tenants. Villenage subsequently, and by gradual steps, as we have seen, was developed into copyhold tenure, commonly so called, or tenure by copy of court roll, at the will of the lord, according to the custom of the manor. The mineral rights in relation to this particular tenure have already been considered. But the term copyhold is taken, in its largest sense, to include two other varieties of tenure, namely, ancient demesne and customary freehold. Ancient demesne partakes of the baseness of villenage in the nature of services, but also of the freedom of socage in their certainty. Manors in ancient demesne, though now mostly in the hands of subjects, were part of the royal domain at the time of the Conquest. The tenants in ancient demesne possess certain customary privileges, supposed by Lord Coke to be derived from the indulgence of the crown in matters pertaining to the king's husbandry. In this tenure the freehold is not in the lord but in the tenant, and it follows that in the

absence of special custom, prescription, or express conveyance, the right to the minerals will be in the tenant.

The other variety of the tenure is called "customary freehold," and exists in many parts of the kingdom. The evidence of title is to be found upon the court rolls, and the entries declare the holding to be according to the custom of the manor ; but it is not said to be at the will of the lord. Persons holding by this tenure are called "customary freeholders," yet here the freehold is in the lord, and the timber and minerals belong to him and not to the tenant. The customs of these manors are subject to great variety, but for the most part the incidents of customary freehold are similar to those of ordinary copyhold.

The existence of a manor is proved by the production of the ancient muniments of the manor, the court rolls, the exercise of manorial rights, and by reputation. Reputation is also admissible to prove the boundaries of a manor. In actions by or against the lord of a manor, the right usually depends on proof of the particular custom of the manor, and of the actual enjoyment of that which is claimed by or against the lord. The case of *Barnes v. Mawson* (which shows how far evidence of reputation may be carried on a question whether the lord of a manor was entitled to the coals under a freehold tenancy within the manor) has been referred to under the head of "Property in Coal" at the beginning of this work.

THE RIGHT TO WORK MINERALS.

1. *When the Owner does not hold the Surface.*

We have next to consider in what cases the proprietor of coal strata is entitled to work them, when the property in them is separated from that of the surface, and forms a distinct inheritance and possession.* Mineral property in this condition is held either by express grant or exception, or by virtue of acts of ownership which have created a prescriptive right, by lapse of time, against the owners of the surface. In this last case the acts themselves have established the full right to work. It is a general rule that when anything is granted, the means of attaining it, and all the fruits of it (so far as the power and estate of the grantor extends), are also granted.† Thus a grant of minerals involves also the power and right to enter and work them, unless there is some restriction in the grant itself. Any special power will be limited in its duration and consequences by the particular expressions which confer it. In all well-prepared instruments, compensation is provided in such cases for injuries to the surface. But in the absence of such express stipulation, it is presumed that proper compensation would still be recovered, unless any words in the instrument itself could be construed to

* It may be convenient to state that if A., the owner of land, lets B. open a shaft to dig for minerals without any other express stipulation, B. is bound to fence that shaft. (*Williams v. Groucott*, 27 J. P. 693.)

† As to the right to sink through an upper seam, see page 29.

withhold it.* Of course a person can only grant what he himself possesses, and, therefore, in the case of minerals under copyhold lands, though the lord may grant the property in those minerals to another, he cannot grant the right of entry to work them.

2. *Rights of Persons with limited Interests.*

A tenant in tail has an estate of inheritance, to hold to himself and the heirs of his body, or to himself and particular heirs of his body. These tenants in tail, as they have estates of inheritance, are entitled to commit every kind of waste, but this power continues only during the life of the tenant in tail. When it is said that tenants in tail may commit every kind of waste, the meaning is, that they can do those acts to the land which tenants who have not an estate of inheritance cannot legally do. Now, as waste consists, amongst other things, in opening new mines or quarries, it follows that a tenant in tail may do these acts. Tenants in tail, after possibility of issue extinct, are also not impeachable for waste, but, like tenants for life, when their estate is given without impeachment of waste, they may be restrained from wilfully destroying the estate.

A tenant for life, without being authorized, cannot commit waste. A mortgagee in fee in possession has a right at law to commit any kind of waste, being then considered as the absolute owner of the inheritance; but he will be restrained by a Court of Equity, which will direct an account of timber, for instance,

* Bainbridge on Mines, 59.

cut down, and order it to be applied in reduction of the mortgage debt.

Copyholders cannot, unless there be a special custom to warrant it, commit any kind of waste, and every species of waste not warranted by the custom of the manor, operates as a forfeiture of the copyhold.

Ecclesiastical persons who hold lands in right of a church, are disabled from committing waste, though, like other tenants for life, they have the right to take from the land the materials necessary for repairs. They cannot legally open new mines, but they may work those already open. And this distinction between mines already opened and unopened is important in other cases besides that of ecclesiastical persons. Lord Coke says, "A man hath land in which there is a mine of coals, or the like, and maketh a lease of the land without mentioning any mines, for life or for years; the lessee for such mines as were open at the time of the lease made, may dig and take the profits thereof. But he cannot dig for any *new* mine that was not open at the time of the lease made, for that should be adjudged waste. And if there be open mines, and the owner make a lease of the land with the mines therein, this shall extend to the open mines only, and not to any hidden mines. But if there be no open mine, but the lease is made of the land together with all mines therein, then the lessee may dig for mines and enjoy the benefit thereof, otherwise these words should be void."* But this last proposition

* Co. Litt. 54, b.

is not now held to be law. There is but little difference in this respect between a tenant for life and for years. Both are now equally punishable for waste, and both may work mines already opened.

But a tenant for life, *without* impeachment of waste, may open and dig mines at his own pleasure, though a Court of Equity would probably interfere if it were shown that he was exercising his privilege in a wanton or malicious manner. For every mining operation is to some extent a destruction of the property, and must be exercised fairly.

A jointress, tenant for life, is in the same situation as an ordinary tenant for life, and may be with or without impeachment of waste. An estate by the courtesy, and an estate in dower, are also estates for life, and the holders are punishable for waste. Coparceners, joint tenants, and tenants in common, are also liable to each other for waste ; but they may all concur among each other in an act of waste, provided this concurrence includes all.*

The remedies for waste are either by action of trespass on the case in the nature of waste, which may be brought by the person in reversion or remainder, for life or for years, as well as in fee ; or, secondly, by application to the Court of Chancery by bill, which will then not only direct an account to be taken for the damage done, but will interpose, by way of injunction, to restrain the commission of future waste. Ecclesiastical persons may also be proceeded against

* 11 Rep. 49 a; Denys *v.* Shuckburgh, 4 T. & C. 42; Durham and Sund. Rail. Co. *v.* Wawn, 3 Beav. 119.

for waste in the Civil as well as the Ecclesiastical Courts. It has been held that an action will lie against them for dilapidations, and may be brought by the successor to a benefice against his predecessor or his representatives. There is also no doubt that the Court of Chancery may grant an injunction against any ecclesiastical person to stay waste in cutting down timber, or opening new quarries or mines on the glebe.

CHAP. II.

LEASES AND LICENCES.

THE mineral districts of Great Britain are generally worked under leases or licences, upon the construction and obligations of which disputes very commonly arise. It seems expedient, therefore, to insert in this place a sketch of the nature of the instrument called a lease ; of its form and requisites ; and the rules of construction of the covenants contained in them.

A lease is a contract between parties by which the one conveys any lands or tenements to the other for life, for years, or at will. But it is always necessary that the lands or tenements must be let for a less time than the period for which the lessor has an interest in the property. The relation thus created is generally expressed by the phrase, landlord and tenant. A lease is usually made in consideration of rent, or some other annual recompense, to him who conveys the premises. The lessor, or landlord, has a reversion in the lands, &c., which are let ; that is, after the expiration of the lease the land *reverts* to him. By virtue of this reversion, he has the power of distraining on the land for the rent which is agreed upon.

The ordinary lease is that for a term of years, by which lease, a rent, usually payable in money, at stated times, is reserved.

The words used in a lease for the purpose of conveying that interest in the lands or tenements which constitutes a term of years, are "demise, grant, and to farm let." But none of these words, though usual, are indispensable to the effect of a demise. Any expressions which sufficiently indicate the intention of one of the parties to divest himself of the possession for a determinable period, in favour of the other, are clearly sufficient to constitute a lease. And even the words "agree to let," may be so used as to amount, in construction of law, to an actual demise, and are not necessarily to be expounded as a mere agreement for a lease. The words may run in the form of a licence, or covenant, or an agreement. For a lease for years being simply a contract for the possession and profits of the lands or tenements on one side, and a recompense of rent, or other income, on the other, if the words made use of are sufficient to prove such a contract, in whatever form they are introduced, the law calls in aid the intention of the parties, and models and governs the words accordingly.

By the Act 8 & 9 Vict. cap. 106, s. 3 (passed in 1845), leases required by law to be in writing are made void at law unless they are made by deed.

The Statute of Frauds, 21 Car. II. c. iii., enacts that all leases or terms of years by parol, and not put in writing and signed by the parties so making them,

shall have the force and effect of estates at will only ; excepting, nevertheless (sect. 2), all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount to two third parts at least of the full improved value of the thing demised. Yet, notwithstanding the statute, a parol lease for more than three years will create a tenancy from year to year. But a parol letting, to commence on a future day, for three years, is not warranted by the statute. If a landlord lease for seven years by parol (by which is meant a verbal letting, or one in writing, but not under seal, nor in the form prescribed by the statute), though such lease be void by the statute as to the duration of the term, the tenant holds under the terms of the lease in other respects, as to the rent, the time when he is to quit, &c.

BY WHOM LEASES MAY BE GRANTED.

All persons not under legal disability may grant leases for terms not inconsistent with the nature of their estates, provided they have the actual or constructive possession of the premises, and not a mere right of entry. The term granted in the lease must be for something less in duration than the interest of the person granting it. If made for the whole time it would rather be an assignment.

Tenants in tail may make leases to bind their issue, (but not those in remainder or reversion,) if a fair and proper rent is reserved, and the other conditions prescribed by the statute 32 Hen. VIII. c. xxviii.

are observed. So may a husband seised in right of his wife, provided she join in the lease by indenture. Such leases must begin from the date of the deed. If there be an old lease, that must first be surrendered, or be within a year of expiring. They must either be for twenty-one years, *or* three lives, or less. They must be of corporeal hereditaments, and of lands, &c., commonly let for the last twenty years past. The usual rent for the last twenty years must be reserved ; and these leases cannot be made without impeachment of waste. These are statutable leases.

Leases by tenants in courtesy, dower, or jointure, become void on their death, and the acceptance of rent by the heir does not make the lease good. The lessee continues to be mere tenant by sufferance.

The assignees of a bankrupt have under 6 Geo. IV. c. xvi. s. 77, general powers, and may make leases of the estate, if beneficial to the creditors ; and the same powers are given to assignees of insolvents.

Executors and administrators may either assign a term come to their hands, or they may underlet in the same manner as the deceased person they represent might have done. But they must carefully see that they have that power by the will.

Mortgagors and mortgagees cannot make leases to bind each other's interests. Trustees for charities may make leases provided they are beneficial to the objects of the trust, but if otherwise, they may be set aside by a Court of Equity.

As to the power of ecclesiastical persons to grant

leases of mines and minerals, two enabling Acts have been passed in the present reign. By the statute 21 & 22 Vict. c. lvii. it is enacted, that if it shall be made to appear to the satisfaction of the Ecclesiastical Commissioners for England and Wales, that all or any part of the lands, mines, minerals, &c., belonging to any ecclesiastical corporation, which are by the stat. 5 & 6 Vict. c. cviii. allowed to be leased, might, to the permanent advantage of the estate or endowments, be leased in any manner, or be sold, or otherwise disposed of, it shall be lawful for any ecclesiastical corporation, aggregate or sole (except as in the previous Act is excepted), with the consents in that Act mentioned, and with the approval of the said Commissioners signified by deed, to lease all or any part of the mines, minerals, &c., belonging to such corporation, whether they may have been previously leased or not, in consideration or partly in consideration of premiums, for such term and on such conditions as the said Commissioners shall think proper.

By the former Act, in the case of a lease by the incumbent of a benefice, the consent of the patron is made necessary, and he must also be a party to the lease.

Every power that can be necessary for making mineral property available to the Church and its lessees, seems to be supplied in these two statutes. The special application of the proceeds is also defined and provided for, but need not be inserted in this treatise.

Leases of lands in copyhold capable of being leased

may be granted by the lord of the manor or his steward. But copyholders cannot grant leases for more than a year without licence from the lord, or by special custom, without incurring a forfeiture of their estate. But a lease for a year, and so on during the will of the lessor, is good.

Powers of leasing must be strictly followed. Leases executed by agents in the name of the principal, they having powers by deed for this purpose, are good to all intents and purposes.

As to what may be the subject of leases, it is settled that all corporeal hereditaments may be leased. Tithes and tolls may be leased, and so may rights of common under certain conditions, and also rights of way.

PARTS OF A LEASE.

A lease by deed usually contains—the premises ; 2, the habendum ; 3, the reddendum ; 4, the covenants ; and, lastly, any proviso, or condition.

The premises contain the name of the lessor and lessee ; the consideration ; a description of the thing demised, in express words, or in such a way that by reference it may be reduced to a certainty ; and the exception or thing excepted, if any. The recitals also (or statements of facts admitted by both parties, which it is thought expedient to record in the deed), are contained in this early part of the lease ; and the date of the instrument, which cannot be post-dated, but may be ante-dated as far back as the parties please. The consideration must be either “good,” as natural

affection, or "valuable," as money and the like. In leases it is commonly the annual rent.

With respect to the description of the thing demised, it may be convenient to state that the word "land" comprehends, in its legal signification, any ground, soil, or earth whatsoever. It legally includes, also, all houses and other buildings; and any ground which is covered with water. "Land," also, in its legal meaning, has an indefinite extent upwards as well as downwards. So that it includes, not only the face of the earth, but everything under it or over it. Therefore, if a man grants all his "lands," he thereby grants all his mines of metal and other fossils, his woods, his waters, and his houses, as well as his fields. Not but that the particular names of the things are equally sufficient to pass them; but the distinction is this, that by the name of a croft, &c., nothing else will pass but what falls strictly under that term, but by the name of "land" everything terrestrial will pass. The words "more or less" must be confined to a reasonable deviation only from the description.*

If the thing described be sufficiently ascertained, it is sufficient, though all the particulars are not true. Whatever constitutes the essence of the thing granted, or is part of it, will pass with it, though it be accidentally severed at the time of the lease.

When *all* the minerals within certain lands are the subject matter of the lease, no dispute can well arise, except with respect to boundaries. But in some cases only particular strata or deposits are demised. In the

* Step. Black. i. 158.

case of coal there is much less difficulty than in that of metalliferous veins. Yet it sometimes happens that the stratification is disturbed. An upper stratum of coal may be depressed so as apparently to correspond with a lower stratum ; and the lower but adjacent strata may in their character closely resemble the upper one. The utmost care, therefore, should be taken in a lease to render the description as clear and intelligible and accurate as possible.

After describing the subject matter, the lease usually proceeds to grant full liberty to work the mines. It is true that the right to work mines is necessarily incident to the grant without any express authority for that purpose, but it is always preferable to leave no room for dispute. In the case of *Goold v. The Great Western Deep Coal Company* (29 J. P. 820), it appeared that an upper seam of coal was leased to A. with the reservation of the right to lease the underlying seams to other parties, to be worked so as not to impede or injure the working of the upper veins. It was held that the right was thereby impliedly reserved to open a shaft through the upper seam, for the purpose of working the lower seam, and that the restriction upon the mode of working applied only to the seam when reached, and not to the mode of reaching it. But all other rights must be expressly mentioned. The required rights of way should be stipulated for, and not left to be implied from the grant. And in mineral districts the owner of the land should make such reservations with respect to rights of way as may seem to be probably required for future mining operations. Way-leaves are sometimes of great value, and

when they may probably be required, they should be reserved in all farming leases. Every prudent lessee should secure to himself all necessary rights of way, as well from other persons as from the grantor, before he begins to work.*

If any parts or rights are to be *excepted*, they should be set out and described before the insertion of the habendum, as, for instance, different strata from those demised, rights of way above and below the surface, &c. &c.

The habendum is that part of the lease which begins with "To have and to hold." Its office is to fix the number of years for which the lease is to continue, if it be for years; and if it be for lives, it states the number, names, and description of the lives during which it is to run. In short, it defines the quality and the quantity of the estate. If the lease is granted for seven, fourteen, or twenty-one years, or other different periods, then, in the absence of any further stipulation, the lessee only has the choice at which of the periods the lease shall end. When there are more lessees than one, the habendum should express whether they are to take as joint tenants, or as tenants in common.

The reddendum, or reservation of rent, is a clause in the lease by which the lessor reserves some new thing to himself out of that which he had granted before. It is usually made by the words "yielding and paying," or similar expressions. It must be by certain and apt words. Thus, a lease for years,

* Bainbridge on Mines, 200.

reserving rent "after the rate" of £18 a year, is void for uncertainty. It must be of some other thing *issuing out of* the thing granted, and not a part of the thing itself, for that would be an *exception* out of the thing granted, and not a rent. Therefore the reservation in a mineral lease, of some proportion of the mineral in its natural state, is not strictly a rent, but an exception. There can be no distress for such a species of rent. Whereas, the reservation ought properly to be of such a thing as that the grantor may have the resource of distraining for it, even without special stipulation.

"In mines of coal the rent is usually in money, and in many instances is made to vary with the market price of the article. In the coal districts of the north of England, the demise is usually made subject to an annual certain rent, and also to what is called a tentale rent. Sometimes a rent of a certain sum of money for every ton is payable; but in case the rent thus payable shall not amount to a certain sum in every year or part of a year, then the deficiency is to be made up by a further payment, unless the mine shall be incapable of producing to the extent which would be required for yielding the landlord's rent. The lessee is still left at liberty, during any subsequent period of his lease, to work a quantity of coal equal to such deficiency, without further payment. In other districts a distinct proportionate part—as one-seventh—of the money, realised by the sale of the coals raised is reserved, with such an additional sum, if required, as may always yield to the lessor a certain fixed rent, unless the mines are incapable of

producing a specified number of tons in the week. This proposition, however, varies indefinitely, according to the nature of the operations, the supposed risk, the amount of expenditure, and the general circumstances. Special rents or renders are fixed for outstroke rights, way-leaves for general purposes, and other privileges." *

There is some difference between the usual forms of colliery leases in the north of England and those of the great Welsh coal-field. The term is generally shorter—and separate rents are sometimes reserved in respect of the use of the shaft, way-leaves over the surface, and underground way-leaves and outstroke. In Wales these are in general included in the "way-leave." The reservation of the royalties is often expressed in a different form.

When lands are let with the mines it is usual to reserve a surface rent, without reference to the mines.

The covenants come next. The word "covenant" means a clause of agreement *in a deed*, by which either party may stipulate for the truth of certain facts, or may bind himself to perform, or give something to the other, or to abstain from some act which, if done, would be prejudicial to another. The general principle is clear, that the landlord may annex whatever condition he pleases to his grant, provided it is not illegal or unreasonable. A covenant is either expressed or implied. It exists either in fact or by construction of law. An express covenant is an

* Bainbridge on Mines, 203.

agreement by deed in writing, sealed and delivered. An implied covenant is that which the law implies from the relation established between the parties by a particular deed, though it be not expressed in words.

No particular technical words are requisite to constitute a covenant. Any words which import an agreement are sufficient, when embodied in a deed properly executed. A covenant gives to the covenantee and his representatives, in case of its breach, a right of action for damages, against the covenantor and his representatives.

As to the construction of covenants, the general rule is, that all contracts are to be taken according to the intent of the parties, expressed by their own words. If there is any doubt upon the sense of the words, such construction shall be adopted as is most strong against the covenantor.* Deeds, including, of course, leases by deed, being the highest description of private written documents, are themselves the best evidence of the facts which they contain, and of their makers' intentions. In their construction, regard must be had to all their parts; and general words may be restrained by particular recitals. If a deed operates two ways, the one consistent with the intent of the party, and the other repugnant to it, the courts will put such a construction on it as to give effect to such intent.

When a material word appears to have been omitted in a lease by mistake, and other words cannot have their proper effect unless it be introduced,

* See next chapter.

such a lease must be construed as if that word were inserted, although the passage in which it ought to stand conveys a distinct meaning without it.

Admission of Parol Evidence.—The general rule with regard to the admission of parol evidence, to explain the meaning, or to add to, vary, or alter, the express terms of a deed, is that it shall not be admitted, except where (although the deed is clearly enough expressed) some ambiguity arises from extrinsic circumstances; where the language of a charter or deed has become obscure, and the construction doubtful from antiquity; where the grant appears uncertain from want of acquaintance with the grantor's estate; where it is important to show a different consideration consistent with, but not repugnant to, that stated in the deed; when it becomes necessary to show a different time of delivery from that at which the deed purports to have been made; where it is sought to prove a customary right not expressed in the deed, not inconsistent with its stipulations, or, lastly, where fraud or illegality in the formation of the deed are relied on to upset it.

If a clause in a deed is so ambiguously or defectively expressed that a court of justice cannot, even by reference to the context, collect the meaning of the parties, it will be *void* on account of uncertainty.*

Covenants for the payment of the stipulated rent, and for the quiet enjoyment of the lessee, will be implied by law. The covenants that ought to be introduced, in general, into a mining or colliery lease,

* *Woodfall's Landlord and Tenant.*

are these: By the lessee, that he will pay the rents, taxes, and outgoings, and make compensation for damage and spoil done to the lands and grounds; to work the colliery in a proper manner according to the regular course; to deliver monthly accounts to the lessor; keep plans of the workings; cause the coals to be weighed; allow the lessor or his agents to inspect the works, and also the books; to leave a barrier of a certain width against any other colliery adjoining the same; and not do any act whereby the colliery may be injured; to yield up the premises quietly at the end of the term in good condition; that the lessor may sink shafts, &c., a certain time before the expiration of the term; permit the lessor to enter; not assign or underlet without leave in writing; with *special stipulations* in some cases as to working the seams in specified proportions, and paying an additional rent for a greater proportion of coal got out of a particular seam; and not to take more than a certain proportion out of certain seams; and to sink certain pits to a certain seam, and raise the coal at those pits from that seam, &c. &c.

The lessor covenants for quiet enjoyment; and the other objects and intentions of the parties are usually effected by provisoies or conditions.

These differ from covenants in being binding on both parties. But mutual covenants may be introduced to effect these purposes. Conditions are either precedent or subsequent. When a condition must be performed before the estate can commence, it is called a condition precedent; as where the lessor grants to his lessee for years that on payment of £100 within the

term, he shall have the fee simple, this is a condition precedent, and the fee will not pass till the £100 be paid. But if a man grants an estate in fee simple, reserving to himself and his heir a certain rent, and that if that rent be not paid at the time specified, it shall be lawful for him to re-enter and make void the estate granted ; here the grantee has an estate upon condition subsequent, which may be made void if the condition is not performed.* Conditions, as well as covenants, are to be construed according to the real intentions of the parties. The usual provisoes are, that the lessor is to have the option of purchasing the stock, tools, materials, and machinery, at a fair valuation, or otherwise the lessee is to be entitled to remove them ; for re-entry on non-payment of rent, and for referring disputes to arbitration.

In leases of collieries it is also common to insert provisoes that the lessee shall not be bound to work through creeps, old waste, &c., that the lessee may lay waggon ways, staiths, spouts, &c., with an option to the lessor to take them at a valuation at the end of the term ; for power to the lessor to distrain for rent ; and that the lessee within a certain time from the end of the term may take away all coals then at the bank, &c. Conditions are most properly created by using the words "on condition ;" but the word commonly, and as effectually made use of, is "provided."

It is also usual to introduce a power for the lessee to put an end to the term at the end of any one year, or at certain specified periods. And in some leases of

* Steph. Blackstone, i. 277.

coal mines, it is agreed that during any suspension of the works by unavoidable accident, the rents shall cease to be payable, and that in case of a partial suspension the rents shall be apportioned; that the mines may be shown within a certain time from the expiration of the lease to parties desirous of becoming the tenants; that the lessor, if required, will grant a new lease to the same party; and that the lessee shall erect certain specified buildings and machinery.

It is customary to introduce covenants by the lessor for quiet enjoyment and for further assurance. A learned writer suggests that it would be very proper for him to enter into covenants for title also, on the ground that when much capital is laid out by the lessees they may be really regarded as purchasers. And when no investigation into title takes place, as is frequently the case, there is the more reason for the insertion of such a covenant.

A form of the lease of a colliery will be found inserted in the Appendix, and another of the lease of a way-leave.

Licences.—It is important to keep in mind that a lease which gives an exclusive interest must be distinguished from a mere licence. Thus a grant that it shall be lawful for a man, his heirs and assigns, at all times to enter upon the lands to search and dig for coal, is only a licence, and conveys no interest so as to enable the grantee to exclude the grantor from getting coal.* And where the owner of the fee granted by indenture to A. and his partners liberty

* *Cheetham v. Williamson*, 4 East, 469.

to dig for metals throughout certain lands, with specified powers of working, excepting to the grantor certain liberties for driving adits, &c., for the term of twenty-one years ; and in the indenture were contained covenants by the lessee for the payment of a royalty, and other covenants, and a proviso for re-entry on non-performance,—it was held that this deed was a mere licence.*

Distinction between Lease and Agreement.—Some of the leading cases on the subject of the present chapter are the following. It is often a matter of dispute whether an instrument is an agreement for a lease or an actual lease. The case of *Doe d. Morgan and others v. Morgan and Powell* (14 Law Journ. C.P. 5) contains the doctrine on this point in very clear language. The instrument then in question ran as follows : “M. T. D. hereby agrees, for himself, his administrators, and executors, to let and grant a lease to M. W. and W. of the coal, iron mine, &c., under the property there mentioned, at 9d. per ton for coal, &c., for the term of seventy years from the 2nd of February, and that so much royalties as will amount to £50 a year be worked or paid for during the term, which rent is to commence in a year from the time a pit is sunk through the four-foot coal, with power to work the said minerals ; and to deposit rubbish and making a wharf as is usually granted in such leases of a similar nature ; and by W. T. D. power was given to the lessees, on giving six months' notice, to quit the same, &c. &c., the lessees bound them-

* *Doe dem. Hanley v. Wood*, 2 B. & Ald. 724.

selves to commence sinking a pit before the 24th of June next ; and the said M. T. D. engages to sign a lease on the said terms, as soon as it can be prepared." Chief Justice Tindal said that "the courts are to judge of the intention of the parties in construing an instrument of this nature, and for this purpose they are to look at the instrument itself, and at the subject matter of the intended demise ; but I am not prepared to say they can look further. In discovering the intention of the parties to this instrument, it is important to consider first, whether it contains any words of actual demise ; and secondly, whether possession was actually given at the time of the instrument being made." Mr. Justice Erle said, "In order to discover the intention of the parties, we are to look at the words of the instrument, and the state of the premises. Looking at the premises, they are of a nature which peculiarly require a more formal instrument. Looking at the instrument, both parties would suffer if this were construed to be a lease. There would be no certainty of any rent ever being payable to the landlord, and there would be no means of access to the mineral demised to the tenants. It would be essential to the tenants to have the right of depositing rubbish, and of a wharf, but this instrument would not operate to pass such a right. There is also no time stipulated for taking possession, for though the tenants are to commence sinking a pit before the 24th of June, yet if before that time the lessor had prepared a lease, and the lessees found he had no title, the lessees would be discharged from their stipulation. Upon

these grounds and others, I think this instrument is an agreement only."

The allusion to the right of laying rubbish, and making a wharf, not being passed by this instrument, is founded upon the rule, that these rights are in the nature of easements, and that easements, being incorporeal hereditaments, can only be effectually passed by deed.

In the case of *Doe dem. Wood and another v. Clark* (14 Law Journ. Q. B. 233), Mr. Justice Pattison said : " In order to constitute any particular instrument a lease, and not an agreement for a future lease, we must be able, looking at it, to say confidently, *when* the interest of the tenant is to commence."

If there be a power of re-entry after a notice to be given to the persons who work the mines, the form of that notice must be strictly followed. Thus, in the case of *Musket v. Hill* (5 Bing. N.C. 694), there was a proviso in a licence that if the grantee (after notice to work the mines effectually, according to the laws of good mining) should fail to keep six miners at work, and that if notice in writing should be given of the grantor's intention to avoid the licence because of such failure, then, after a month, it should be lawful for the grantor to re-enter, &c. ; and the grantor gave notice to the grantee that *unless* he kept six miners at work he would re-enter after a month,—it was held that such notice did not avoid the licence.

Where there was a proviso, determining the lease, if the tenant should at any time cease working two years, and he did cease for two years ; and the lessor afterwards received rent,—it was held that the lease

was only *voidable* at the option of the lessor, and that he might put an end to the lease upon any cessation to work commencing two years before the day specified in the declaration.*

In another case† a licence had been granted to the defendant to enter upon certain lands to dig for ore, for a term of 21 years. There was a proviso that if he ceased to work the mines for six months, or broke any other of the covenants in the licence, then the indenture should cease, determine, and be utterly void, and of no effect. It was held that the word void was to be construed to mean *voidable*, and that some act of the lessor to show his intention and determination to put an end to the licence, and enforce the forfeiture, was necessary for that purpose.

Acceptance of Rent after Forfeiture.—The general rule is that a forfeiture of a lease is waived by the landlord accepting rent after the occurrence of the fact which constitutes the forfeiture, provided the fact was known to the lessor at the time.

Waiver.—But if a lessor elects to waive his power to forfeit the lease on one occasion, he may, of course, take advantage of another opportunity to do so, if a subsequent act of forfeiture occurs. And if the covenant is a continuing one (such as a covenant to insure and continue insured certain premises), a breach subsequent to the waiver will entitle the lessor to re-enter.

* *Doe d. Bryan v. Banks*, 4 B. & Ald. 491.

† *Roberts v. Davey*, 4 B. & Adol. 665.

If a lessor perceives a continued act of forfeiture, there is no waiver without some distinct act on his part; but if he permits the tenant to lay out money in improvements it will be a question for the jury to say whether such evidence would amount to proof of his sanction and concurrence. So, where a landlord finding the premises out of repair, gave the tenant three months' notice to repair according to his covenant, it was held in the case of *Doe d. Morecroft v. Meux* (4 B. & C. 606), that he could not maintain ejectment for a forfeiture until three months had elapsed, and also that the notice was a waiver of the breach of the covenant to repair.

But there can be no doubt that an act of forfeiture, however clear, may be waived by a distinct act of the lessor, as, for instance, by accepting or distraining for rent, or bringing an action for the payment of rent, when it has accrued due since the act of forfeiture was complete. But it is obvious that this rule will not apply, except in cases where the landlord knew that the act of forfeiture had taken place, unless, indeed, the condition be of such a nature as to be equally within the knowledge of both lessor and lessee. The act relied on as amounting to a waiver is matter of evidence only, as to the intent and meaning and knowledge with which it was done, to be left for the opinion of the jury under the whole circumstances of the case. A distress for rent will only amount to an acknowledgment of a tenancy up to the day of the distress, and a waiver of any forfeiture up to that time.*

* *Woodfall, Landlord and Tenant.*

Re-entry.—We proceed to consider how the landlord may exercise his right to put an end to the lease after an act of forfeiture. If the act of forfeiture be the non-payment of rent, an actual demand of the rent must be made previously to commencing an action of ejectment for the exact amount due, and on the very day when it becomes payable, and with other formalities which it is difficult to fulfil accurately. But if the lease contains a power of re-entry for non-payment without further demand, after the rent is in arrear a certain number of days, then the landlord may maintain an action of ejectment without an actual re-entry or demand of rent. And under the statute 4 Geo. 2. c. xxviii. s. 2, the landlord cannot maintain ejectment for non-payment of rent, if there be a sufficient distress on the premises demised. It is also to be observed that an actual entry upon an estate generally is an entry for the whole, and if it be for less it should be so defined at the time. It is not absolutely necessary that there should be an actual entry by the grantor to put an end to the estate granted. The object may be effected by the entry of persons claiming interests or authority under the grantor.

Relief in Equity.—Cases of forfeiture are jealously considered by courts of law and equity. Formerly a lessee might be relieved from the forfeiture by an offer of the rent at any time, even after an action of ejectment had been brought. But by the statute 4 Geo. II. c. xxviii., it is enacted that, if the tenant shall suffer judgment and execution without paying the rent and arrears with costs, and without filing any bill for

relief in equity within six calendar months after the execution, he shall be barred from relief. But if at any time before the trial he shall pay, or tender the rent and costs, the ejectment shall be stayed.

The general rule is, that relief will be given against forfeiture by breach of covenant by the lessee when compensation can be made. And as against a clause of re-entry (that is, the right to eject) for breach of a certain class of covenants, relief in equity is not limited to mere cases of accident, but is granted even against negligence and voluntary acts. But there is no relief against a forfeiture by breach of a covenant not to assign without a licence, nor by breach of a covenant to keep premises insured. A form of proviso will be found in the Appendix which places re-entry on a very fair and reasonable basis. The author is indebted for this useful form to D. Randall, Esq., of Neath, who is conversant with the letting of mineral property.

For a great number of years it has been considered to be law that if a lessee may not, by the terms of his lease, assign his interest without a licence so to do, yet, if he did so obtain a licence to assign once, the condition was gone, and the assignee might again assign without licence. This difficulty has now been put an end to by the legislature. It is enacted by the 22 & 23 Vict. c. xxxv. s. '1, that "where any licence to do any act which without such licence would create a forfeiture or give a right to re-enter, under a condition or power reserved in any lease, &c., shall, after the passing of the Act, be given to any lessee or his assigns, it shall, unless otherwise expressed, extend only to the permission actually given, or to any specific

breach of any proviso or covenant, or to the actual assignment, under lease, or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence); and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue as against any subsequent breach of covenant or condition, &c., not specifically authorised or made dispusnisable by such licence, &c., in the same manner as if no such licence had been given, and the condition or right of re-entry shall remain as if such licence had not been given, except as to the particular matter authorised to be done."

By the 23 & 24 Vict. c. xxviii. s. 6, it is enacted that "where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor, or his heirs, executors, administrators, or assigns, shall be proved to have taken place after the passing of this Act, in any one particular instance, such actual waiver shall not be deemed to extend to any instance, or any breach of covenant or condition, other than that to which such waiver shall specially relate, nor to be a general waiver of the benefit of such covenant or condition, unless an intention to that effect shall appear."

CHAP. III.

COVENANTS IN LEASES, ETC.

QUESTIONS have frequently arisen upon conditions or covenants inserted in leases of coal mines binding the lessees to work the mines as far as they ought to be worked. The result of the cases seems to be the equitable ruling, that such stipulations are sufficiently complied with if the lessees have *bonâ fide* made sufficient experiments to show that there are no such minerals, or that they are not *fairly* workable.

Covenants to work the Coal.—In the case of *Hanson v. Boothman* (13 East, 22) a lessee covenanted that he would forthwith proceed to sink for coal, so far as ought to be accomplished by persons acquainted with the nature of collieries, and as in such cases was usual, and also to erect certain engines. Disputes arose, which were referred to arbitrators, who awarded that the lessees had not performed their covenants, inasmuch as they had not sunk for coal in the manner mentioned in the lease; and the said arbitrators proceeded to define that the lessees should pay a certain sum of money, and work the mines and erect the engines. They accordingly did so, but afterwards desisted, and an action was brought by the landlord, to

which the lessees pleaded that they would have continued to work the mines, and would have erected the engines, but that there were no mines of coal in the lands which ought to be worked by any person acquainted with the nature of collieries, or which it was in such cases usual to work, or which would have defrayed the expense of working, and that they had ascertained the truth of this by trials. Lord Ellenborough held that this plea might be no answer to the alleged breach of covenant for the time past in not trying to get the coal, *yet it was an answer to any further breach* that they had tried as far as they could and ought to do in the judgment of persons of competent skill, and as far as was usual and customary, and that no coal could be got. It was suggested, however, that it would be better to take issue upon the sufficiency of the experiments made by the defendants, and leave was given to amend for that purpose.

In the case of *Jones v. Shears* (7 Car. & Payne, 346) a tenant had agreed to work a coal mine, so long as it should be "fairly workable." There were coals in the mine, but of such a description that it would not pay to work it. It was held that under these circumstances the tenant was not bound to work the mine, and that under the words "fairly workable" a tenant was not bound to work at a dead loss. This was, however, the individual ruling of Mr. Justice Coleridge.

In the case of *James v. Cochrane* (22 Law Journ. Ex. 201, and 8 Excheq. 556) the covenants were very obscure and ambiguous, and there was no express obligation on the lessees to work the mines at all.

There it was held that the lessees could not be compelled to sink a pit for that purpose, even though it was doubtful whether any other mode, by way of outstroke or adit, was authorised by the lease.

In the case of *Morris v. Smith* (3 Doug. 279), a lessee had covenanted in a coal lease to pay a certain proportion of the value of nine hundred weight of the coals to be raised, unless he were prevented by unavoidable accident from working the pit. The defendant pleaded that he had been so prevented by unavoidable accident. It appeared in evidence that the accident might have been remedied at a greater expense than the value of the coals to be raised. It was held that the lessor was entitled to recover upon the covenant, on the ground that the accident was not of such a nature as to render the working of the pit impossible, but only more difficult and expensive.

In the case of *Philipps v. Jones* (9 Sim. 519), the plaintiff was lessee of a coal mine, at the rent of £300 a year, and subject to a royalty of ten shillings for every wey of coals raised in each year above six hundred, that being the quantity considered to be paid for by the £300 a year, and the plaintiff was authorised to put an end to the lease on the coal being worked out. The plaintiff worked the mine for several years, and when it was nearly exhausted, he was prevented by accidents and defects in it from continuing to work it, except at a ruinous expense. The court refused to restrain the landlord from suing for the rent of £300 a year; though the plaintiff offered to pay him ten shillings per wey for all the remaining coal. It must be observed that in this case

the power of abandoning the work had been limited to entire exhaustion, and it was agreed that the certain rent should be paid at all events.

In the case of the Marquis of Bute *v.* Thompson and others (14 Law Journ. N. S. Ex. 95), the lessee of a coal mine underlet it to the defendants, who covenanted to raise and work 13,000 tons of coal in each year, and pay at the rate of 8*d.* per ton royalty for the same, or pay that amount of money, namely, £433 6*s.* 8*d.*, as fixed rent, whether the coals should be worked or not, and also 9*d.* for each ton over and above that quantity, to whatsoever extent the coals should be worked. An action was brought for the rent, and the defendants pleaded that by the fair and proper working and getting of the coal claimed, the same was before the half year claimed for greatly exhausted, and that less than a fourth part of the 13,000 tons was left. This plea was founded upon the supposition that the existence of a sufficient quantity of coals to make up the royalty was a condition precedent to the plaintiff's right of action. But the Court of Exchequer held that the stipulation for a fixed rent, coupled with a covenant that coal should be worked to that extent, and if above it, that there should be a payment of 9*d.* for each ton over and above, did not carry with it, by any implication, a condition that there should be coals to that amount capable of being wrought. "It appears to us," said Chief Baron Pollock, "to be a stipulation on the part of the defendants, that they will work and get that quantity, and if they did not get it, that they would

pay a fixed rent to the landlord ; and we cannot import into that covenant a condition that there should be coals to that extent. If that was the intention of the parties they should have so expressed it."

In the case of *Mellers v. Duke of Devonshire* (22 Law Journ. C.C. 310), certain rents were reserved in the lease for every acre of two beds of coal, and it was also stipulated that every year the tenant should work not less than two acres of two beds of coal, or would pay for that quantity at that rate every year, whether the same could be got or not. The lessee filed a bill for cancelling the lease, on the ground that the coal in one bed could not be freed from water so as to be worked ; that this fact could not be known before the lease was granted ; and that the other bed was so broken by faults as to render it impossible to procure the stipulated quantity. But it was held that such a mistake on the part of the lessee was not relievable ; that every mining lease was granted in ignorance of what might be got ; that the parties make terms accordingly ; and that the lessee was bound to pay the rent.

An important case, *Morgan v. Lewis and others*, was lately tried at Swansea with respect to the construction of a lease. There were two great questions : first, whether a dead rent of £1,000 a year, which had been expressly reserved to a tenant for life, who was the original lessor, was to be paid during the whole term to the remainder men who came in after him, whether the coal was worked or not, there being no

express reservation of it to them. The second question was in substance whether the assignees of the lease were justified in ceasing to work the coal after certain trials, on its proving unmarketable and unprofitable. There was a demurrer to the declaration so far as it related to the dead rent of £1,000. It was admitted that there was no express covenant to pay it after the death of the tenant for life. But it was argued that the average clause which provided that the lessees or their assigns might, *every year during the term*, make up any deficiency in the stipulated manner so as to balance the rent of £1,000, indicated the intention of the parties that the said rent should always be paid till the expiration of the lease. The court said that if they could gather such an intention for the reversioner as well as the tenant for life to have the benefit of the rent they would prevent any default. But they thought there should be evidence of intention in the language of the instrument itself, and that it was reasonable to suppose that the tenant for life might have made stipulations for quick working which might not be made to enure to the benefit of the reversioner. The claim to the £1,000 a year was therefore lost.

As to the action tried at Swansea, it turned upon the covenant to work in a workmanlike manner, according to the custom of working in the neighbourhood, and honestly to get all the minerals which can be found under the said hereditaments so as not to prejudice the future working, and shall not suffer to be left any minerals which, according to the most approved mode of working, ought fairly to be worked.

The assignees contended that they had done all they could to prove the seams that are not yet worked out, and believing that they could not work them, they have offered to give them up on being merely paid for the plant as old iron. For many years they supplied coal to the inhabitants of Merthyr, but the quality of the coal so fell off that the demand ceased. The result was the same as to the export of coal from Cardiff. It was alleged at the trial that there were breaches of covenant in not working the coal and permitting it to remain ungotten, also for working in an improper manner. The jury found for the defendants, and no question was raised upon the latter point. But upon the first alleged breach a new trial was moved for on the ground of misdirection. It appeared that the mine was in fact worked to the extent of about 30 tons a day. The plaintiff said that was not enough, and that the covenant was not fully performed. Mr. Justice Keating told the jury that the proper element for them was: What was the market for the coal? and also that they might take into account whether the mine had been reasonably worked, in order to see whether as a prudent man the lessee would be called upon to work the mine. It was held that there was no misdirection. The Lord Chief Justice said, "I agree that the size of the mine and the quantity of coal is an element, but you must also regard the state of the market, in order that you may not impose upon the man the working of a large quantity and large extension at a ruinous loss to himself, when that loss will inevitably follow in consequence of the state of the market with reference to

the article to be raised. You may protect yourself, as lessors generally do, by a fixed rent, if the coal is not worked commensurately with the size of the mine. Here, unfortunately, there is no such covenant (that question having been disposed of on demurrer), and in the absence of it we are bound to see whether the thing has been reasonably worked or not, and look at all the surrounding circumstances. The misdirection is said to be this : That the learned judge told the jury that they might take into account the element whether the mine had been reasonably worked, and the state of the coal market in the neighbourhood, in order to see whether, as a prudent man, the lessee would be called upon to work the mine.

“ In the first place, I think the question of reasonableness applies. In the second place, I think that the state of the market was an element, and only one element, of many to be taken into account.

“ I think the question of reasonableness applies because I do not think that any of the covenants had reference to more than two distinct things ; first, the method of working, quite irrespective of the quantity ; and, secondly, as I read it, taking it as a whole, it does not appear to be capable of being broken up into several divided portions. It simply is for the benefit of the lessors that the mine shall be fairly and honestly worked according to the established usage and custom of working, so that the lessee shall be bound to take the coal as it comes, and not to pick out that which is most advantageous to himself and leave the residue for the lessor. It is

a covenant for the protection of the lessors and no more, and consequently it cannot apply."

In the case of *Jowett v. Spencer* (15 Law Journ. N.S. Ex. 347), the plaintiff had granted to the defendant certain coal mines, and the latter covenanted to pay £40 for every acre of coal which should be found, and till the price was fully paid to pay £40 in each year, whether the whole of an acre should be got or not in one year. It was contended that the finding of the coals was a condition precedent to the obligation to pay in either case. But it was decided that the indenture operated as an absolute sale and conveyance of the coal, and that the word "found" means *ascertained to lie and be*.

In the case of *Green v. Sparrow* (cited 3 Swanst. 408), a rent of £600 a year was reserved in a lease of coal mines, the first quarter to be payable at the next feast after the tenant should have worked one thousand stacks of coal. He covenanted that he would dig the thousand stacks without delay. It was alleged that the defendant, after having entered, had worked before the first quarter day the thousand stacks of coal, except a small quantity, and had then fraudulently avoided completing the quantity before Lady-day in order to escape the stipulated payment on that feast. Lord Chancellor King considered that there was fraud in preventing the digging before the quarter day, in order that the rent might not commence so soon, and that this fraud required the interposition of the court. It was therefore decreed that the defendant should pay the first quarter's rent at Lady-day, on the ground

that the thousand stacks would have been dug by that day had it not been for the fraudulent delay of the lessee.

Two other cases relating to the construction of covenants in colliery leases are valuable guides.

In the case of *Quarrington v. Arthur* (10 M. & W. 335), the plaintiff had demised to the defendant all the mines and beds of coal which had been, or during the demise should be, discovered or opened under certain lands, at the yearly rent of £20, to be paid whether the coal should be worked or not, together with 7d. per ton for every ton of coal raised. And the defendant covenanted that he would at all times during the demise work the mines in a workmanlike manner. The breach of covenant assigned was that he permitted the mines to lie and that no coals were gotten. To this it was pleaded that the mines were never before the demise worked or gotten, and that the defendant had never at any time since or during the demise worked or got the mines. It was held that under these circumstances the defendant was not liable on this covenant, because the subject matter of the demise was not all the mines under the lands, but only such as had been or should be discovered or opened.

In the case of *James v. Cochrane* (22 Law Journ. Ex. 201), the lessees had covenanted to leave un-worked a barrier between their works and the adjoining mine, except where the lease gave them liberty to break through it. The liberty reserved was to make "outstrokes," or other communications through the barrier for the purpose of conveying

coals underground got in any of the adjoining collieries belonging to the lessees, from such colliery into the demised mine, and by such outstrokes and communications to convey underground the coals from such adjoining collieries into the mine, and from thence to convey and carry away all such coals, and also draw to bank at any of the pits or shafts sunk or to be sunk by the lessees, in any of the lands and grounds demised, the coals from such adjoining collieries. It was held that this liberty extended to authorise the lessees to break through the barrier for the winning coal of such adjoining mines, though the coal of such demised or adjoining mines, when won, was not to be, nor was, brought to the surface through a shaft in the demised land, and although no such pit in fact existed.

Some provisoess in the lease also spoke of shafts in the demised lands, but there was no express covenant to make any shaft. There was also a covenant that the lessees would draw to bank at some of the shafts of the said colliery, provided they should be shafts from which the coals of the demised colliery should not be worked by an outstroke. It was held that under these provisoess there was neither express nor implied engagement by the lessees that bound them to sink a shaft in the demised land.

There was also a covenant that the lessees would keep the levels, drifts, and necessary staples for air in good repair, order, and condition. It seemed to be the opinion of the court that the fact of allowing the workings and air courses of an old seam of the mine which had been partially worked, but was now

being worked no longer, to remain full of water, was not a breach of this covenant.

A valuable judgment in connection with the working of coal under certain covenants has just been given by Vice-Chancellor James, in the case of *Lewis v. Fothergill*, on an application for an injunction. Mr. Fothergill had taken a large tract of minerals from the plaintiff. He also worked other minerals adjacent to these, under a different owner and lease. In order to avoid the outlay of £30,000 at least in sinking on the Lewis estate, he approached those minerals from his previous workings. It was sought to restrain him from so doing by means of any headings or strokes from the other estate or from any workings *to the rise* of the Lewis estate, and from working in such a manner as to prejudicially affect the working of the other seams in the said estate, and otherwise than in a workmanlike manner, and unless adequate means of *draining* the coals and minerals under the Lewis estate shall have been provided. The remainder of the dispute will be best gathered from the language of the Vice-Chancellor. He said: "The agreement which I have to construe, as applying to the facts proved in this case, is the mere ordinary mineral agreement, the covenants are mere ordinary covenants in an agreement for a mineral lease. It is a lease of a certain farm containing 245 acres at least of the minerals under the farm, with a dead rental or royalty of so much a year, with a proviso that if the quantity of coal worked in any year shall not amount to the annual rental of £500, then instead thereof the annual rent or sum of £500 at least shall be paid as

fixed or dead rent. There is then a proviso with respect to that fixed or dead rent, as follows:—The fixed or dead rent of £500 not to be charged at all for the three first years, provided the necessary steps are *bond fide* taken, with ordinary despatch, to win and work the said coal, but the dead rent, or royalty, is only during those three years to be charged upon the quantity, if any, actually worked. Then the lease is to contain a five years' average clause, to the intent that no more than £2,500 shall be paid by the lessees for sleeping or dead rent, and royalties in any five years of the said term of 99 years, unless the quantity of minerals actually worked in the same five years shall amount to more. There is, I believe, every covenant that is usually included in a mineral lease specified here. There is then a covenant for working the said coal and mines in a proper and workmanlike manner; then I should say that the lease is to be for 99 years; and then there is a power given to the lessees to take so much land as they may require, and upon that land to make any roads that may be necessary for conveying the minerals, to sink pits, drive headings, and to do all other acts and deeds necessary for working the same. I do not know that there is anything in that document more than I have read, which is material for the proper construction of the instrument. The contention on the part of the plaintiff is this, that this being a lease of minerals under a farm of very great extent, that there is to be implied in this a covenant that the property shall be won by means of an independent system of drainage provided on the estate itself, by sinking pits down to

the coal, and working the coal from those pits upon that estate. That is the contention that has been raised in the argument, although it was not put quite so strongly as that in the evidence on the part of the plaintiff. I am utterly unable to see where I have power to introduce any such covenant as that into an instrument so precise as this, any more than I have the power to introduce any other possible covenant that might be suggested. There is nothing contained here, as it seems to me, which can prevent the lessee from exercising his legal right with regard to that which is his legal property during the 99 years, of getting that property by any means which he can lawfully use for that purpose. If he has an adjoining property, he commits no trespass in working his own coal from that adjoining property. There is nothing here to prevent his doing that, which, I believe, is probably now in modern times very much more general than it used to be, in consequence of the very large increase of these workings, of working this coal in combination with a great quantity of others, so as to form one large undertaking. I see nothing to imply that he shall not work his coal in such manner as he shall think fit for himself in combination with, or not in combination with, another property of the same kind which he may hold. That brings it to another question. The plaintiff says, although that may be, and you have a right of working it in connection with other property, you have no right so to work it in connection with other property by sinking to the deep so as to expose the deep workings to be drowned, if from any cause, at any time, you do not keep up a

sufficient means of drainage upon the estate itself. That, he says, he has a right to complain of as not being a proper and workmanlike manner of working the mine. He says, if you sink your headings to the deep, and do not provide an independent system of drainage, (I think the words that I took down were, if you work by instroke without providing means of pumping on the estate itself,) then that is illegal and improper, as not being a proper and workmanlike manner of getting the coal. Upon that, it appears to me that in discussing the question of what is proper and workmanlike, the court is not to sit as a court of appeal, or a tribunal to determine between two sets of engineers or surveyors as to which is or which is not the best mode of working a coal mine. What the court has got to see is, is there any evidence that the parties are working *mala fides*, or working without a sufficient amount of care, and a sufficient and reasonable amount of skill. In this case I find that what the defendants are doing they are sanctioned in doing by the evidence of a great number of very respectable engineers, who not only say that it is not only not improper nor unworkmanlike, but that it is a proper and workmanlike manner of getting the coal. With that evidence it is impossible for me to say that the defendants have improperly done anything to take the property, either by *mala fides*, or without proper skill and proper care in so working. And applying one's own reasoning to the subject, it does not seem to me that there can be any substantial difference whether it is worked by instroke or working from the deep. The damage that is suggested to me, that the parties may

become insolvent, and not be able to keep up their machinery, and so on, would hardly apply where the pit is not made on the property itself; and that the pit may be properly made on the property itself is according to the view of every one of the witnesses, including Mr. Dobson, the principal witness on behalf of the plaintiff. Mr. Dobson suggested, as one reason why it would not be unreasonable for the defendants to incur so large an expenditure as £30,000 in sinking pits upon this estate, that they would be able thereby to work other properties to the rise of those pits, and, indeed, the whole of his evidence is pregnant with this, that the complaint is not working the property by means of a pit on another property, but that it is working the property by means of a pit to the rise of the working in question. The possible damage appears to me to be the same in one case as in the other, and I cannot construe the thing, or construe the proper and workmanlike manner of working it, with reference to any such considerations. Of course, gentlemen who have a property of this kind know exactly everything which the property is liable to in the ordinary course of mining, and it is for them to make such stipulations as they may think fit for any special provision they may think necessary to protect them against any possible consequences, and it is not for the court to say that anything is improper or unworkmanlike with reference to any such consideration. I may also mention this, that there is no evidence whatever that any actual damage has been done. There is a great amount of evidence to show that no damage can be done by the continuance of the workings in headings

B and C, and the instroke workings from the Tirtald-win estate. That disposes of the first part of the case. Then the second paragraph of the prayer of the bill is, 'That it may be declared that the necessary steps on behalf of the defendants have not been *bonâ fide* taken with ordinary despatch to win and work the coal comprised in the said articles of agreement according to the terms thereof, and that the fixed or dead rent of £500 a year is payable.' That must be determined substantially with reference to the same considerations, that is, it is a question of *bona fides*, and a question of ordinary skill and ordinary care in prosecuting the works. Upon that again there is an immense amount of evidence to show that what has been done is the proper mode of doing it, that it does win the coal. I mentioned once or twice in the course of the argument what my view of the meaning of the word 'winning' is, that it is very nearly the same as that taken by the defendants—that you win the coal when you have reached it in such a way as to enable you effectually to prosecute the working of it. There is nothing very technical in the meaning of the word 'win.' It is not that they are to win, but that they are 'to take the necessary steps *bonâ fide* with ordinary despatch to win and work.' A great number of witnesses on behalf of the defendants say that they have taken steps which, in their judgment, were the proper means, and that they have done it *bonâ fide* with ordinary despatch. In that case the burden being on the plaintiff to prove *mala* practices, if I may use such a term, he fails in doing that. Then upon this part of the case this is very material, as to

any claim which the plaintiff could have, or anything which would extenuate his conduct in coming to this court at all. It is proved to my satisfaction, beyond all doubt, that before this agreement was entered into, his agent, with his authority, did settle with defendants what particular mode they were to adopt in winning this coal, and that it was settled between them that this particular mode of reaching and winning this coal was by driving proper headings down to the deep," &c.

In the course of the contention the opinions of some eminent mining engineers were given with reference to the meaning of the term to win. Mr. Elliott, M.P., stated his view in the following terms : " It is very well known that winning and getting are distinct terms in mining ; and it is equally well known that one must precede the other ; coal is won when it is proved and a position attained so that it can be worked and conveyed to bank. Various modes of winning coal are adopted, according to the position of the minerals and other circumstances. Coal may be won either by levels, by drifts, by headings to the rise, or by headings to the deep."

And the following case is a remarkable instance of the equitable construction and interpretation which a court of law will attach to a covenant in a mineral lease.

Construction of a Reservation of Minerals.—Where a person granted land of which he was the owner in fee to another, reserving to himself all the coals and minerals, with full liberty to dig for and take them, making fair compensation for damage to the surface,

it was held that under this reservation he was not entitled to take all minerals, but only so much as he could get, leaving a *reasonable* support to the surface. The damage complained of was done to a house and garden, &c. In giving his judgment Mr. Baron Parke said : “ The rule of law is that a reservation is to be construed strictly. Still it would reserve to the grantor all that was not conveyed by the grant, provided the meaning and intention of the parties be clear. What is their intention here? It is clearly the intention of the grantor that the surface shall be fully and beneficially held and enjoyed by the grantee, he reserving to himself all the mines and veins of coal below. By reasonable intendment, therefore, the grantor can be entitled under the reservation only to so much of the mines below as is consistent with the enjoyment of the surface, according to the true intent of the parties to the deed ; that is, he only reserves to himself so much of the minerals as could be got, leaving a *reasonable* support to the surface. I do not mean to say that all the coal does not belong to the defendants, but that they cannot get it without leaving sufficient support.*

Upon the whole it would seem that as a general rule the construction of covenants is the same in equity as at law. But equity will give relief against a strict performance under peculiar circumstances of hardship, and when there is no wilful default.

What Covenants run with the Land.—Covenants are said to run with the land, and extend to the

* *Harris v. Ryding*, 5 M. & W. 76.

assignee of each party, when they are for the benefit of the estate demised, or affect the mode of enjoyment; or (as it has been sometimes expressed) when they touch or concern the thing demised. This rule prevails even although the assignee be not named. Thus a covenant to pay rent, to repair, or to leave in repair, will run with the land, as it affects the estate in the hands of any person who holds it. So a covenant to build a new smelting mill, in lieu of an old one, in a lease of mines, has been held to be a covenant running with the land, as it tended to the support and maintenance of the thing demised. But where in a lease of ground, with liberty to erect a mill, &c., the lessee covenanted for himself, his executors, administrators and assigns, not to have persons to work in the mill who were settled in other parishes without a parish certificate, it was held that this covenant did not run with the land, nor bind the assignee of the lessee.* The distinction appears to be as between those covenants on the one hand which impose upon and attach to property certain incidents and burdens recognised by the law, by which it may be affected, or certain rights which may be enjoyed with it by other parties besides the owner; and on the other those covenants which create special incidents and burdens of a novel kind at the fancy or caprice of the owner. In the case of *Keppel v. Bailey* (2 Mylne & K. 517), certain persons having established a railway called the Trevil, the Keppels, who held the Beaufort iron-works under a long lease, covenanted with the owners of the

* *Congleton, Mayor of, v. Pattison, 10 East, 180.*

railway, that they, their executors, administrators, and assigns, would procure all the limestone for the iron-works from the Trevil quarry and carry it on the Trevil railroad, paying a toll. The Keppels assigned the lease to the defendants, who made a railway to other limestone quarries. An injunction was applied for to restrain them. It was then objected to the covenant, amongst other things, that it was not such a one as would run with the land, and bind the defendants, as assignees. Lord Chancellor Brougham held that such a covenant would not run with the land. He said: "There can be no harm in allowing men the fullest latitude in binding themselves and their representatives, that is their assets, real and personal, to answer in damages for breach of their obligations. This tends to no detriment; but great detriment would arise, and much confusion of rights, if parties were allowed to invent new modes of holding and enjoying real property, and to impress upon their lands and tenements a peculiar character, which should follow them into all hands, however remote. Every close, every messuage, might thus be held in a different fashion, and it would be hardly possible to know what rights the acquisition of any parcel conferred, or what obligations it imposed. The right of way, or of common, is of a public as well as of a simple nature, and no one who sees the premises can be ignorant of what all the vicinage knows. But if one man may bind his messuage and land to take lime from a particular kiln, another may bind his to take coals from a certain pit, while a third may load his with obligations to employ one blacksmith's forge, or the members

of one corporate body, in various operations on the premises. The difference is obviously very great between such a case as this and the case of covenants in a lease whereby the demised premises are affected with certain rights in favour of the lessor. The lessor or his assignees continue in the reversion while the term lasts. The estate is *not out of them*, though the possession is in the lessee or his assigns."

Thus, though it appears that the law will not sanction the imposition by covenant of special and peculiar incidents on lands, so that the burden of them should be transferred to an assignee, the case is otherwise as between landlord and tenant. As between them more latitude is allowed. As a general rule, all *implied* covenants run with the land ; and as to *express* covenants in a lease, the question is whether they sufficiently *touch and concern* the thing demised to be capable of accompanying the land from hand to hand, or whether they are so alien to it as to be mere personal obligations for a breach of which the covenantor shall be personally liable by himself or his personal representatives, having assets. But numerous decisions have already settled all dispute on this point as to various covenants commonly or occasionally inserted in leases. Thus, it is certain that the following covenants in leases "so touch and concern the thing demised" as to run with the land into the hands of successive assignees, viz. : for quiet enjoyment ; for further assurance ; to repair ; to discharge the landlord from all burdens on the land ; to cultivate or use the property demised in a particular manner ; to grind at the lessor's mill, &c. &c. In the

case of *Hemingsway v. Fernandez* (12 Law Journ. C. 130), the lessees had covenanted for themselfes and their assigns to carry all the coals from a particular colliery, and all the coals from any other mines to be worked by them, in a certain township, at a rate or rent of 2*d.* a ton. The lessees assigned their interest to Fernandez, who refused to pay the 2*d.* per ton upon any other coal than that got from the particular colliery first mentioned ; and he used another railway for such other coal. It was held by Vice-Chancellor Wigram that this covenant ran with the land and bound the assignee. But in this case the assigns were expressly named in the covenant, and he considered that it fell within the second resolution in Spencer's case. In that case* (which is the leading one on this subject, and has been ably commented upon in Smith's Leading Cases) a person had covenanted for himself, his executors and administrators, with Spencer, in a lease of a house and land, to build a brick wall on part of the land so leased. The lessee assigned to another, and he again assigned. The action was brought against the assignee of the assignee. It was held that if the lessee had covenanted for him *and his assigns expressly*, the assignee would be bound. But not having done so, and considering that the covenant referred to a *new thing*, which was not in being at the time of the demise, but was to be newly built afterwards, the assignee was not bound. It was deemed to be a collateral covenant of a personal nature, affecting the lessee and

* 5 Coke, 16 ; and Smith's Leading Cases, vol. i.

his personal representatives only. If, on the other hand, the covenant had referred to something then in existence, part and parcel of the subject matter of the lease, then the thing to be done by virtue of the covenant is in some sense annexed and appurtenant to the subject matter of the lease, and goes with the land, and binds the assignee, even if he is not expressly named. And it was distinctly laid down at the close of this case, that inasmuch as the reversioner or lessor could only assign the benefit of a covenant to his assignee by virtue of the statute 34 Henry VIII. c. xxxiv., and not by the rules of the common law, so that statutable power of assignment must be confined to covenants which *touch* or *concern* the thing demised, and not extend to collateral covenants.

There are covenants which are occasionally introduced into leases which are so qualified in their terms as to give rise to difficulties in their construction. For instance, in the case of *Clifton v. Walmesley* (5 T. R. 564), the lessee of a coal mine covenanted to pay a certain share of all such sums of money as the coal should sell for at the pit's mouth. It was sought to charge him with a liability to pay part of the money produced by sale of coals elsewhere, but he was held not liable under the covenant so to do.

Means of terminating the Contract.—With respect to the means of putting an end to the demise, or lease, besides that of forfeiture by some breach of the covenants contained in the lease, there are also the following means of terminating it, namely, by the period expiring during which the premises were

leased ; by cancellation of the instrument of demise ; by surrender of the term ; and by merger in the fee. A tenancy from year to year may, of course, be terminated by either party giving to the other a proper notice to quit.

Statute of Frauds as to Surrenders.—But by the statute of frauds it is provided, that “ no leases, estates, or interests, either of freehold, or terms of years, shall be surrendered, unless it be by deed or note in writing, signed by the party so surrendering, or their agents lawfully thereunto authorised by writing, or by act and operation of law.” Therefore a lease for years cannot be surrendered by merely cancelling the indenture without writing.

Surrender by act or operation of law, or implied surrenders, are excepted. Of this kind are surrenders created by the acceptance of a new lease from the reversioner, either to begin at once, or at any time during the continuance of the first lease.

Merger takes place when there is a union of the freehold, or the fee with the term of years in one person at the same time. In such a case the greater estate merges or drowns the lesser, because they are inconsistent and incompatible.

Notice to quit.—Notice to quit is necessary to put an end to a tenancy from year to year. It may be given by either landlord or tenant. It must always be given half a year previously to the expiration of the current year of tenancy, so as to expire at the same period of the year in which the tenant entered on the premises. Thus, if the tenant entered on the occupation on Candlemas day, the notice to quit must

be served half a year previously to Candlemas day. A valid notice to quit cannot be given to expire at any other time, unless there is some special agreement on this point, or some particular local custom intervenes. A written notice is not always necessary, but it is always expedient that it should be in writing. If given by an agent, he must have authority to do so at the time when such notice begins to run and operate. It should be clear and certain in its terms, not leaving any option or alternative. If sent by post the receipt should be acknowledged, or if served on the premises on a servant, the purport of it should be made known. The mere placing it in the hands of a servant, without further proof, is not sufficient. But where the term of a lease is to end on a precise day, there is no occasion for a notice to quit previous to bringing an action of ejectment, because both parties must be supposed to know the fact.

An important case, that of *Papillon v. Branton* (5 Excheq. 518), has lately been decided on the subject of notices to quit. Between nine and ten o'clock on the morning of the 25th of March a tenant put into the post-office in London a letter containing notice to quit at Michaelmas, addressed to the place of business in London of the landlord's agent. The agent was there until between five and six o'clock in the evening, and did not receive the letter, but found it there the next morning. It was held that this was a sufficient notice, the jury having found that the letter was delivered on the 25th after the agent had gone away.

Equitable Relief.—A Court of Equity will not only carry into execution agreements for leases, and covenants in leases, by a decree of specific performance, but it will generally relieve persons from engagements made by them under circumstances in which fraud and injustice were ingredients on the other side. But it is a general rule that the party applying for relief must have an equitable title to the interference of the Court. They will not decree specific performance if an agreement be not certain, fair, and just, in all its parts. If the party desiring relief was, on entering into the contract, guilty of gross misrepresentation or deceit, the Court will refuse to order specific performance. And the Court never makes the decree where the act is impossible to be done, but leaves the applicant to his remedy at law. A bill, however, will lie for a specific performance, though there be also a remedy at law; for the remedy by specific performance is often very superior to that of damages, and obtains that object for the grantee which no action could secure. And Courts of Equity will not only thus give relief when a transaction is tainted with fraud, and by decrees of specific performance of legal engagements, compel reluctant parties to fulfil them, but they will also interfere to set right mistakes in deeds or contracts, if the interests of parties are prejudiced by such mistakes. But where the contract is in writing they will not relieve against alleged mistakes, unless there is clear proof of the mistake in the intention of the parties.

LICENCES.

There is a distinction between a lease of mines and a licence to work them. The lease conveys an actual interest or estate in lands, while the licence is only an incorporeal right to be exercised in the lands of others. To ascertain whether an instrument must be construed as a lease or a licence, the test is to ascertain whether the grantee has acquired by it *any estate* in the land, in respect of which he might bring an action of ejectment. If the land is still to be considered in the possession of the grantor, the instrument will only amount to a licence, and the grantee will have no property in the minerals till they are severed from the soil. Thus in the case of *Chetham v. Williamson* (4 East, 469), certain lands were by lease and release conveyed to a person who by the same deed covenanted with and granted to B., one of the parties to the conveyance, that it should be lawful for B., his heirs and assigns, at all times, to enter upon the lands to search for and dig for coal, and to take and carry away the same to his and their own use. This was held to be only a licence, and to convey no interest in the soil, so as to exclude the covenantor and those claiming under him from getting coal there.

Licences to work.—The language of a properly-drawn licence to work minerals marks this distinction clearly. “In consideration of the yearly rent, covenants, &c., herein-after reserved and contained on the part of the said C. D., his executors, &c., he the said A. B. doth by these presents grant and demise unto

the said C. D., his executors, &c., full, free, irrevocable, and exclusive licence and authority to win and work all those quarries or strata of limestone, situate, &c., without any interruption, claim, or disturbance from or by the said A. B., his heirs or assigns, or any other persons whomsoever, and to carry away and dispose of the produce thereof, to and for his and their own use and benefit ; and for the purposes aforesaid to make and use any drains or watercourses for clearing the said quarries from any water which may flow or accumulate therein ; and to erect all such sheds, buildings, steam engines, machinery, and other conveniences, upon or near the said quarries, as shall be proper and necessary for effectually carrying on the said works, or for the workmen employed thereon ; and also to use, repair, or construct any railways, or other ways or roads whatsoever, to or from the said quarries, except out of the licence hereby granted, all such stone as shall be situate under any dwelling house, garden, orchard, corn mill, or manufactory.” Then follow the habendum, and the usual covenants, if it be desired to insert them.

A licence of this description must be conferred by deed, on the ground that it gives a beneficial privilege in land. The exclusive right to work minerals will not necessarily be conferred by a grant to work them. But if such exclusive privilege be desired and intended, words to that effect should be inserted in the deed so as to protect the grantee.

The precedent from which the above extract is taken contains exclusive words which have this effect.

It is a rule of law that no rent can issue out of any

incorporeal hereditament, because such inheritances cannot be distrained upon, except where the Crown is the lessor. Therefore rent, *as rent*, cannot be reserved upon a *licence* to work mines. But the reservation of rent in the same instrument by way of covenant or contract will entitle the lessor to an action of covenant or debt upon the lessee's undertaking to pay the same. The covenants of a grantee of a licence either for a freehold interest, or for years, will run with the interest in the minerals, as they would under a lease. And in other respects the incidents and construction of licences seem to correspond with those of mining leases.* In all cases where any speculation or adventure in working minerals is 'in contemplation, it is important to ascertain whether the mineral property in question is free from any previous grant of licences or other reservations. But as the general practice with respect to mineral property in coals is to grant and take leases, and licences to work mines are chiefly concerned with adventures in lead, copper, and other metallic ores, it seems unnecessary to add more to these observations on licences, for which the writer is mainly indebted to the valuable work on mines referred to at the bottom of the page.

DISTRESS FOR RENT.

The law has furnished landlords with several methods of recovering rent, in the event of non-

* Bainbridge on Mines, 258.

payment on the day it is due. They may proceed by an action for the amount of rent, or by distress on the premises. This last is the method most commonly resorted to. It is a remedy given to the landlord by the legislature, by which he may seize the goods of his tenant on the premises, sell them, and reimburse himself for the rent in arrear, and the costs of the proceeding. To authorise a distress there must be an actual existing demise at a fixed rent. If the landlord has treated the tenant as trespasser, he cannot distrain, for by so doing he has admitted that he is no tenant, and distress supposes a tenancy subsisting. So long as the goods are on the premises, he may distrain for one year's rent, even though the tenant be a bankrupt, and his goods in possession of the messenger. The same thing may be done in case of the tenant's insolvency. But in this last case he has no lien on the goods after they are removed, whereas, in bankruptcy, the landlord may prove for the remainder of his debt like any other creditor.

In general all goods and chattels found on the premises, whether the property of the tenant or a stranger, may be distrained. But articles on the premises in the way of trade, such as a horse at a smith's shop, tools and implements of trade in actual use, and some other matters, are exempted. A distress must bear some fair proportion to the sum distrained for. It must be made in the daytime, and not till after the rent is due. If made after the tender of arrears it will be illegal. And though the tender be made after the distress, but before it is

impounded, the landlord must deliver up the distress, and the expenses, if any, be paid by him.

By the 2 Geo. II. c. 19, goods fraudulently or clandestinely conveyed off the premises, to avoid a distress for rent, may be seized anywhere within thirty days after, unless *bond fide* sold to parties not privy to the fraud.

The place where the distress is deposited in security, or, as the phrase is, is impounded, may be on such part of the premises as is most convenient. But if the goods distrained are removed, notice must be given of the place where they are, and such notice should contain an inventory of the goods distrained. Unless the owner replevy the distress within five days after notice of the distress, the distrainor may have them appraised by the sheriff, &c., and proceed to sell by auction. The proceeds, after paying the arrears and expenses, must be retained by the sheriff for the owner of the goods. On the sixth day he may proceed to sell and remove the goods. If he remain on the premises after that time without the consent of the owner, he may be treated as a trespasser. A second distress may be made if the proceeds of the first are insufficient, or if the replevy be nugatory.

By the Common Law Procedure Act, 15 & 16 Vict. c. 76, in the case of landlord and tenant, where half a year's rent is in arrear, and the landlord has the right to re-enter for non-payment, he may bring a writ of ejectment in the simple form prescribed by that Act. On proof that there were not sufficient goods to satisfy a distress, he shall have judgment

and execution. But if the tenant pays all rent and costs before trial, the proceedings are to cease.

The question of a landlord's right to distrain upon certain fixtures of the tenant will be considered in the Section that treats of fixtures.

STAMPS AND REGISTRATION OF LEASES.

By the 13 & 14 Vict. c. 97, leases of any lands or hereditaments which are granted in consideration of a fine or premium, and without any yearly rent amounting to £20, are liable to the same stamp duties as for the conveyance on the sale of lands for a similar amount. If leases are granted both in consideration of a fine or premium, and also of a yearly rent of £20 or upwards, they are liable both to the preceding duties, and *also* to the duties payable on an ordinary lease with a reservation of rent.

The ordinary duties are as follows :—

	£	For 3 years or less.	For more than 35, but not more than 100 years.	For more than 100 years.
Rent not exceeding	5	0 0 6	0 3 0	0 6 0
„ „	10	0 1 0	0 6 0	0 12 0
„ „	15	0 1 6	0 9 0	0 18 0
„ „	20	0 2 0	0 12 0	1 4 0
„ „	25	0 2 6	0 15 0	1 10 0
„ „	50	0 5 0	1 10 0	3 0 0
„ „	75	0 7 6	2 5 0	4 10 0
„ „	100	0 10 0	3 0 0	6 0 0
For every other £50 or fractional part - - }	0 5 0	1 10 0	3 0 0	

When there is a fine or premium, and also a rent of £20 or upwards, the lease is liable as well to *ad valorem* duty in respect of the fine, as to the duty for rent.

Leases for a life or lives, not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted, and leases for a term absolute, not exceeding twenty-one years, granted by ecclesiastical corporations, either aggregate or sole, are excepted when the duties payable would amount to £1 15s. or upwards, and when a fine is paid; but if no fine is paid, they are subject to the ordinary duties payable on the amount of rent.

Leases of mines or minerals, with or without any other lands or hereditaments, where any part of the produce is reserved in money or kind, are thus liable to duty. If the value of the reserved produce is stipulated to amount *at least* to a *given sum per annum*, or be limited not to exceed a given sum per annum, the duty is charged in respect of the highest of such sums given or limited for any year of the term. If a yearly sum is reserved in addition to such produce, without such stipulation or limitation, the duty is charged in respect of the yearly sum: and where both a certain yearly sum and also such produce, with such stipulation or limitation, the duty is charged upon the aggregate of the yearly sum, and also of the highest yearly amount or value of such produce.

A lease, *not otherwise charged*, is subject to a duty of £1 15s. This stamp will often be required in

mining leases, and covers other matters introduced therein, in addition to the duties above stated. It is also the proper stamp when no certain rents are reserved.

Counterparts and duplicates of leases charged with a duty not exceeding 5s. are liable to the same duty as the originals, and counterparts of all other leases are liable to the duty of 5s., with a progressive duty of 2s. 6d., and must be impressed with a particular stamp.

All agreements involving value to the amount of £20 or upwards are charged with a duty of 2s. 6d., and a progressive duty of 2s. 6d.

An instrument under seal, though it only amount to an agreement for a lease, requires a stamp of £1 15s.

A licence in fee to work mines would appear to be chargeable in the same manner as an absolute conveyance, for it amounts to the absolute sale of an incorporeal hereditament. In other respects there seems to be no distinction between leases and licences.

In cases of doubt as to the proper stamp, any instrument may be submitted to the opinion of the Commissioners. An appeal is also allowed from the Stamp Office to the Court of Exchequer. The penalty in stamping an instrument is £10. But this may be remitted within twelve months by satisfying the Commissioners that the instrument was not duly stamped by accident, &c., without design to evade the duty. And a stamp may be affixed, on payment of the penalty, even in the course of a trial.

Distinct mines may be leased by the same deed at

different rents, and one stamp for the gross amount of the rents will suffice.

Registry of Deeds.—All deeds concerning estates in Yorkshire and Middlesex must be registered, except leases at rack-rent, and leases not exceeding twenty-one years where the actual occupation and possession go along with the lease. But the exception of leases at rack-rent does not apply to mines.

CHAP. IV.

TITLE BY PRESCRIPTION.

THE legal term “prescription” has been so frequently referred to, and it is a title so often relied upon for the acquisition and enforcement of rights connected with the occupation of collieries, that it is proposed to insert an outline of this description of title. Prescription is said to be a title by long usage. In other words, where any person, and those under whom he claims, have, to the knowledge of those against whom he asserts the right, been in the habit from time immemorial of using and exercising some incorporeal right, such as rights of way, of common, use of water, pews, &c. &c., and can show no other title to such right; he is said to claim and enjoy it by prescription. The notion which lies at the root of this title is, that if the owners of property permit, for a long course of years, adverse rights which tend to lessen their exclusive enjoyment of their own, it is reasonable to suppose that there must once have been a legal origin for such claim, and that the grant which conveyed it has been lost. Custom is a local usage; prescription is a personal usage, attaching to a man and his ancestors, or those whose estate he holds.

Down to a very recent period, it was a necessary ingredient in this title that the usage should have been immemorial, that it must have existed beyond the memory of man, or so long that, as Lyttleton says, "no living witness has heard any proof, or had any knowledge to the contrary;" and, as another writer of authority says, "that there is no proof by record or writing, or otherwise, to the contrary." It was a maxim of the law that the time of legal memory meant the beginning of the reign of Richard the First. But though it was not necessary to prove the existence of the alleged usage from that time, and the exercise of it for a long period was said to raise the presumption that the usage had continued during the whole period of legal memory, yet it was sufficient to invalidate the title to show that it had commenced since the time of Richard the First.

A recent statute, however, 2 & 3 Will. IV. c. 71, called an "Act for shortening the time of Prescription in certain cases," has greatly altered this theory. Its principal enactments, so far as they touch any right with which this treatise can be concerned, are the following.

Section 1 enacts that no claim which may be lawfully made at the common law by custom, prescription, or grant, to any right of common, or other profit or benefit to be taken and enjoyed from or upon any land of any person (except such matters as are specially provided for, and except tithes, rent, and services), shall, where such right, profit, or benefit shall have been actually enjoyed by any person

claiming right thereto, without interruption, for the full period of thirty years, be defeated by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years. Nevertheless, such claim may be defeated *in any other way* by which the same is now liable to be defeated. When such right, profit, or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given, by deed or writing.

Section 2 contains an enactment concerning ways and other easements, and watercourses and the use of water. This enactment is exactly like that contained in Sect. 1, which relates to rights of common, &c., except that it substitutes the period of twenty years for thirty years, and forty years for sixty.

Section 3 enacts to the same effect, as to the use of light for any dwelling house, &c.

Section 4 enacts that each of the respective periods of years above mentioned shall be taken to be the period next before some suit or action in which the claim or matter, to which such period may relate, shall have been or shall be brought into question ; and no act or other matter shall be deemed to be an interruption within the meaning of the Act, unless it shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had, or shall have, notice thereof, and of the person making or authorising the same to be made.

Section 6 enacts that in the cases provided for by the Act, no presumption shall be allowed in favour of any claim, upon proof of the exercise or enjoyment of the right or matter claimed, for any less period of time or number of years, than for such period or number mentioned in that Act, as may be applicable to the case and claim.

Section 7 enacts that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an idiot, infant, non compos mentis, fême covert, or tenant for life, or during which any action or suit shall have been pending, and diligently prosecuted, or abated by the death of any parties thereto, shall be excluded in the computation of the periods therein-before mentioned, except in cases where the right or claim is by the Act declared to be indefeasible.

Section 8 enacts that when any land or water, over or from which any such way or other convenient watercourse, or use of water, shall have been or shall be enjoyed or derived, has been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter during the continuance of such term shall be excluded from the forty years, if the claim shall within three years next after the end, or sooner termination of such term, be resisted by any person entitled to any reversion on the termination thereof.

CHAP. V.

FIXTURES.

THE word "fixture" has acquired the peculiar meaning of chattels which have been annexed to the freehold, but which are removable at the will of the person who annexed them. In the case of *Ex parte* Barclay, 5 De G. M. & G. p. 403, fixtures were defined to be "such things as are ordinarily affixed to the freehold for the convenience of the occupier, and which may be removed without material injury to the freehold; such will be machinery, using a generic term; and in houses, grates, cupboards, and other like things." By the expression "annexed to the freehold," is meant fastened to it or connected with it; mere juxtaposition, or the laying of an object, however heavy, on the freehold, does not amount to annexation. But whatever is so affixed becomes part of the realty, and the person who was the owner of it when it was a chattel loses his property in it, which immediately vests in the owner of the soil. It can only revert to the original owner of the chattel by severance and removal, by virtue of certain exceptions allowed by law. It is upon this principle that in calculating the rateable value of

property, machinery attached to it ought to be taken into account, without considering whether it be real or personal estate.

In its widest and natural sense the word fixture would mean anything annexed to the freehold. A privilege is conferred by law, as an exception to the general rule, upon certain fixtures, which, if set up for ordinary purposes, would not be severable from the freehold by the owner of a particular estate, or by his representative, but which, in order to encourage commerce, are removable when set up for commercial purposes. Such is the greater part of the machinery set up by manufacturers and traders, which is now of a description so expensive, that to prohibit its removal from a landlord's premises would be a serious discouragement to trade. By virtue of this exception the tenant of a colliery may now remove the engines, tram-plates, and machinery of all kinds, which have been erected and fixed for the use of the works, together with any merely temporary erections. But substantial buildings of brick and stone must be left, unless they are the subject of special stipulation. Such being the outline of the rule, it is necessary to consider further the various distinctions which have been established by the courts.

Questions respecting fixtures principally arise between three classes of persons. 1st, between the heir and the executor of the same owner of the inheritance. In this case the rule prevails with the most rigour in favour of the inheritance, and against the right to sever and convert into a personal chattel anything which has been affixed to the freehold.

2ndly, between the executor of a tenant for life, or in tail, and the remainder man, or reversioner ; in which case the right to fixtures is more favourably considered for executors than in the case between the heir and the executor. 3rdly, between landlord and tenant, in which the greatest indulgence has always been allowed in favour of the claim to having any particular articles considered as personal chattels, as against the claim of the landlord.

In the two first classes the leading cases are *Lawton v. Lawton* (3 Atk. 13), which was the case of a fire-engine to work a colliery, erected by a tenant for life ; *Lord Dudley v. Lord Ward* (Amb. 113), which was a similar case ; and *Lawton v. Salmon* (1 H. Black. 259), which was an action brought for salt-pans by the executor against the tenant of the heir-at-law. The decisions have proceeded upon the ground that where the fixed instrument, engine, or utensil, and the building covering the same, was an *accessory to a matter of a personal nature*, it should itself be considered as personality. The engines above mentioned were accessory to the carrying on the trade of getting and vending coals, a matter of a personal nature. Lord Hardwicke said in Lord Dudley's case, "A colliery is not only an enjoyment of the estate, but is in part the carrying on of a trade." And again he says in Lawton's case, "One reason that weighs with me is its being a mixed case between enjoying the profits of the land, and carrying on a species of trade, and considering it in this light, it comes very near the instances in brew-houses of furnaces and coppers." Upon this principle the engines for raising

coals were held to belong to the executor. And it may be stated as a general rule, that the representative of the particular tenant, *i. e.*, for life or in tail, is entitled against the remainder man to fixtures wholly or in part erected for the furtherance of trade.

But this question most usually arises between landlord and tenant. The original rule was that the tenant, if he had affixed anything to the freehold during his tenancy, could not again remove it without the consent of the landlord. But several exceptions have been engrafted upon this rule, amongst which the one with which alone this treatise is concerned is this: that utensils set up in connection with and relation to trade may be removed by the tenant. This exception was grounded upon the public policy of encouraging trade, which would otherwise have been materially checked. And the law was very clearly laid down by Lord Ellenborough in the case of *Elwes v. Mawe* (3 East, 38), to which case a most lucid commentary has been appended in Smith's Leading Cases, vol. ii. p. 100. Besides the engines above mentioned, this general exception has been held to extend to a shed called a Dutch barn, set up for trading purposes, and having a foundation of brickwork and uprights fixed in and rising from the brickwork, and supporting the roof, which was made of tiles; and to a shed built on brickwork, and to posts and rails.

It is difficult, however, to say with perfect precision how far this exception or protection may be carried with respect to particular items. Generally, when articles can be removed without causing any serious

detriment and mischief to the freehold, or when they can be taken away without being themselves entirely demolished, or without losing their value, the removal will be lawful. A building entirely of brick, therefore, could hardly be removed, though when it has a brick foundation, and the erection is mainly of wood, it may be removed. A steam engine may be removed, and so may furnaces, and all kinds of machinery, and stoves. How far the removal of store-houses and workshops may be sanctioned by the Common Law Courts it is not possible to say, and must depend upon the nature of each item which may be the subject of dispute hereafter.

Where things may be removed at all, it is incumbent upon the tenant to remove them before the end of the term. The injury done by the severance should be repaired, and the premises left in the state they were in at the commencement of the tenancy, if anything in the nature of a fixture has been substituted for another then affixed, and afterwards replaced. In illustration of this rule, and of the law generally, a few leading cases will be here referred to.

In the important leading case of *Minshull and another v. Lloyd*,* a colliery had been leased with the right of putting up engines, &c., subject to a right of re-entry on non-payment of rent or insolvency. Certain engines were erected and affixed to the soil. The tenant afterwards assigned the property to trustees to secure an annuity. The landlord in June 1829 recovered possession by ejectment,

* 2 M. & W. 459.

and in the following November an execution creditor of the tenant who had so assigned seized the engines, &c., under a writ of *fi. fa.* The trustees then sought to recover the steam-engines in trover. It was held they could not do so, on the ground that the tenant had not severed them during his term. But Mr. Baron Parke stated the law very clearly as follows:—"We take these engines to have been in part affixed in a substantial manner to the freehold, in the ordinary way in which steam engines are erected. The law is clearly settled that everything substantially and permanently affixed to the soil is in law a fixture. The principle of law is that *quicquid solo plantatur solo cedit*. The right of a tenant is only to remove during his term the fixtures he may have put up, and so to make them cease to be any longer fixtures. That right of the tenant enables the sheriff to take them under a writ for the benefit of the tenant's creditor. I assent to the doctrine laid down in *Coombs v. Beaumont* (B. & Ad. 72), that such fixtures are not goods and chattels within the bankrupt law, though they are goods and chattels when made such by the tenant's severance, or for the benefit of execution creditors. These engines were never goods and chattels at all, so as to pass to the plaintiffs. They had only the same right of removal as the tenant, which ceased in June 1829, and that right of removal would not have enabled the tenant to sue in trover for them even during his term."

And Mr. Baron Alderson added, "Fixtures cannot become goods and chattels until the tenant has exercised his right of making them so, which he can only

exercise during his possession. The moment that expires he cannot remove them." Lord Holt expressly puts the tenant's power to remove erections put up for carrying on trade on the ground of its being "*a power coupled with an interest.*"

Bankruptcy of Tenant.—The case of *Coombs v. Beaumont*, referred to above, in connexion with the bankruptcy of a tenant who has erected fixtures on the premises for carrying on trade, occurred under the repealed statute relating to bankrupts. But in the case *Ex parte Humphries* (1 Bankruptcy Report, 72), Mr. Commissioner Fane held that all fixtures set up for the purpose of trade, and which the trader might remove, belong to the assignees in case of bankruptcy. And this decision was in conformity with another and very elaborate one which was delivered by another commissioner, to the same effect, and is quoted at length in a note to the above case.

And in the case of *Hellawell v. Eastwood and others* (6 Ex. Rep. 295), it was held that machinery for the purpose of manufacture, (*ex. grā.*, mules for spinning cotton, fixed by screws into the wooden floors of a factory, or in some cases sunk in the stone flooring and secured by lead,) is by law distrainable for rent. At common law things fixed to the freehold could not be distrained for two reasons ; that what is part of the freehold cannot be severed without detriment to the thing itself, and things which cannot be restored in the same plight and condition cannot be distrained for rent. The Court, therefore, considered whether these mules fell under either of these heads, as otherwise they were not protected. They held

that not being perishable, they were not within the last category, and the only question was whether they were, when fixed, part of the freehold. This is a question of fact, depending on the circumstances of each case, and chiefly on the consideration whether the mode of annexation was such that the article could be removed *integre, salve, commode*, without injury to itself or the building, and whether it was for the *permanent* and substantial improvement of the building, or merely for a temporary purpose. They held that the mules never became part of the freehold. They were slightly attached, and would have passed to the executor ; they never ceased to have the character of moveable chattels, and were therefore liable to be distrained. It seems that the case was decided on the principle that articles of this kind included in this case are not fixtures at all ; that they never changed their legal character of chattels belonging to the tenant, but were merely to be regarded as so much furniture.

But in the recent case of *Boyd v. Shorrock* (37 Law Journ. Chan. 144), it appeared that the tenants of a cotton mill set up some looms, and fastened them to the floor by means of nails driven through the loom feet into wooden plugs fitted into the floor. They mortgaged the mill, with the looms and other machinery, without a bill of sale, and became bankrupt. The looms were claimed by the assignees and the mortgagees. The present Lord Chancellor, Lord Hatherley, then sitting as Vice-Chancellor, said, “The principle seems to be that if the tenant has affixed to the freehold, during his tenancy, articles in such a manner as

to make it appear that during the term they are not to be removed, and that he regards them as attached to the property, according to his interest in the property, then, on any dealing by him with the property to which these articles are affixed, the Court will presume that he meant to deal with the property as it stood, with all these things so attached, and to pass the property in its then condition. The circumstance that they may be transported sometimes, so that they may be placed more conveniently in another part of the building, does not, I think, prevent their being machinery within the decision in *Ex parte* Barclay which I followed in *Mather v. Fraser* (2 K. & J. p. 536). I must hold that these are fixtures which passed with the property, and did not, therefore, require a bill of sale."

In another recent case, *Climie v. Wood* (37 Law Journ. Ex. 158), an engine and boiler were erected, the engine screwed down to planks, and the boiler fixed in brickwork. The question arose as to these articles (which were found by the jury to be fixtures) whether as between mortgagor and mortgagee trade fixtures are removable by the mortgagor. Chief Baron Kelly said that if this "were a question between landlord and tenant, there is no doubt the defendant might lawfully remove the engine and boiler. But no authority has been cited to show that the mortgagor is entitled to remove such trade fixtures as against the mortgagee." There have been several cases where the courts have decided that upon the true construction of the mortgage deed trade fixtures were removable by the mortgagor, but not one to show that such rights existed without a special provision. The old

maxim, *quicquid plantatur solo cedit solo*, applies in all its integrity to the relation of mortgagor and mortgagee, and that trade fixtures form no exception. And where a silk mill was mortgaged, and the deed stated that "all those the steam engine or steam engines, boilers, steam pipes, main shafting, mill-gearing, millwrights' work, and other machinery and fixtures whatsoever then erected or set up, or standing, or being, or which should at any time thereafter be erected or set up, or stand or be in or upon the said lands, mill, and premises, or any part thereof," were to be included in the mortgage, it was held that *all* the machinery and fixtures used in the manufacturing of silk within the mill were included, and not only the machinery necessary to give motive power to the mill. (*Haly v. Hammerly*, 30 Law Journ. Chan. 771.)

In the case of *Penton v. Robart* (2 East, 88), it would seem that the mere erection of a chimney would not prevent the right, which would otherwise have existed, of removing the surrounding building. And in another case it was even questioned whether the tenant could remove a lime-kiln substantially built of brick and mortar, but the point was not decided.

It sometimes happens that the tenant's right does not depend altogether upon the general law, but is extended by a special custom or *lex loci*. See *Culling v. Tuffnell* (Buller's N.P. 34). But to whatever extent the right to remove trade fixtures may be carried, common sense and justice unite in requiring that it should be bounded by the rule laid down by Lord Hardwicke in *Lawton v. Lawton* (3 Atk. 13),

namely, that the principal thing shall not be destroyed by the accessory. "It may perhaps be deduced from this," says Mr. Smith, "that if a trading fixture could not be removed without the destruction or the great and serious injury of some important building, it would be irremovable. But when the building is but an accessory to the fixture, such as an engine-house, and built to cover it, there we have the authority of the great case of *Elwes v. Mawe* for saying that one as well as the other is removable."

In questions as to fixtures arising between vendor and vendee, there seems to be no doubt that upon a sale of the freehold, fixtures attached to it will pass in the absence of any express provision to the contrary. As between the mortgagor and mortgagee there seems to be no reason that a mortgage of lands should pass any different rights with respect to fixtures than a conveyance.

In all cases it must be understood that the law of fixtures must yield to any express stipulation countervailing it. This is now the customary course adopted in leases of collieries. An arrangement is made by which the landlord has the option of purchasing the tenant's fixtures at a valuation, and if he declines the tenant may proceed to remove them. In the form of a colliery lease inserted in the Appendix, an arrangement of this kind will be found. But even under such provisions, disputes will sometimes arise upon items which have not been specially named.

The case of *Foley v. Addenbrooke* (14 Law Journ. 4, 169), is instructive on this subject. The defendant was lessee of some iron-mines, works, and furnaces.

The lease contained a proviso that at the end of the term, the lessors, on giving six months' previous notice in writing of their intention whether they would purchase or not, to the defendant, should have the option of purchasing the iron castings, railways, gins (or windlasses), wimseys, boilers, machines, and moveable implements and materials then in use, or being in and about the furnaces, fire-engines, iron-works, stone-pits, lands, and premises, at a price to be determined in the manner specified ; and in the event of their neglecting to avail themselves of the option, the defendant might remove all such articles as described above. The plaintiffs did not avail themselves of the option or give the notice, and the defendants, before the lease expired, disannexed from the free-hold and took away a variety of articles, and in so doing injured the furnaces and iron-works. In delivering the judgment of the Court of Exchequer, Lord Chief Baron Pollock said as to this point, "The rule which the Court thinks the correct one to act upon is this, that whatever was in the nature of a machine, or part of a machine, as iron-work or iron-casting, or railways, gins, or moveable implements, or materials, the defendants had a right to remove ; that whatever was in the nature of buildings, or support of buildings, although made of iron, the defendants had not a right to remove, and that with respect to damage to the brickwork, the defendants were not bound to restore the brickwork in a perfect state, as if the article it was intended to protect, or support, or cover, were there ; it was sufficient for the defendants to exercise their right to remove what the lease gave them."

authority to remove, and in doing so, to remove the brickwork, and to leave it in such a state as would be most useful and beneficial to the lessors, or to those who might next take the premises." The Court then proceeded to dispose of the various items one by one. They were of opinion that the tenants might remove the boilers, the boiler grates, the castings and iron-work of the engine and regulator, and the spring beams. As to the damage sustained by the removal of these articles, if it meant damage to the brick-work connected with them, the Court thought they were not sufficiently informed as to the manner of removal. The only rule they could lay down was that the tenants had a right to remove them, *doing as little damage as possible*, and leaving the premises in a state fit to be used for a similar purpose by another tenant. Then as to the brickwork of the hot-air apparatus, if it was merely disturbed for the purpose of taking that apparatus which the tenant had a right to take, and being so disturbed was left in a condition fit and convenient for the restoration of another hot-air apparatus by another tenant, then no damages ought to be recovered. The next item was the valve piping, which they thought the tenants entitled to remove. The next item was the damage done to the furnaces by the removal of the hoops, beams, and brick-staffs. The Court thought that the lessors were entitled to recover damages for the removal of these, because these articles were not iron work in the nature of machines or implements, but were iron work *substituted for additional* brickwork, with a view to give additional, and probably necessary, strength to

the furnace, which the defendants had no right to remove or to deteriorate. They thought the tenants might remove the cupola, and the blast-pipes which worked them. They might also remove the puddling furnaces, the mill furnaces, the boilers of the forge-engine, the grates of the boilers, and the castings and iron-work of the forge-engine, but the tenant might not remove the oak taken from the foundation of the forge-hammer. The tenants might remove the plates from the shears foundation, but the lessors might recover damages for any improper method of removal. They might also remove the holding down pins and the bed plates. With regard to the cast-iron columns used for the support of the building, the Court thought they were not within the exception in the lease, and ought not to be taken away, but that the tenants might remove the gasometer and apparatus. If any unnecessary and wanton damage had been done, and the premises left in such a state as not to be conveniently applicable to the same purpose, to that extent the lessors would be entitled to recover damages.

Though this case and judgment furnishes a good guide under similar circumstances, it must be distinguished from ordinary disputes relating to the removal of fixtures. This case turned upon the special provisions of the particular lease. But as colliery leases very generally contain provisions of a similar nature, the opinion of the Court is given very fully.

CHAP. VI.

PRIVATE WAYS, AND WAY-LEAVES.

IT is obvious that the work of collieries can only be carried on without private rights of way in those cases where the land over which the produce is conveyed to the railway, canal, or public road, is the property of the occupier of the colliery. As this is not usually the case, the subject of private ways and way-leaves is one of considerable importance.

The distinction between public and private ways is this: public ways are open to all persons; private ways are enjoyed by particular persons or classes. The general rules of law with respect to private ways are these:—A private right of way belongs to the class of easements, which are a division of incorporeal rights. An easement is a right annexed to, or issuing out of, or exercisable over or within an hereditament corporeal. The right of way is the right, in one person, or more, of passing over the land of another person. There are five kinds of way,—footways; horsegways, for persons passing on horseback; driftways, for driving cattle; carriage ways, for carts and carriages, including always a foot and horseway; and lastly, waterways for ships and boats,

The proper origin of a private right of way is a grant from the owner of the soil, as when by deed the owner of the land bestows on another the liberty of passing over his grounds to go to market, &c. This right may also be gained by prescription, as where all the owners and occupiers of such a farm have been used to cross such a ground for such a particular purpose. The rule of law as to this mode of acquiring the right is settled by 2 & 3 William IV. c. 71, sect. 2, which enacts that "in claims of right of way by prescription, when the way shall have been actually enjoyed for full twenty years without interruption, it shall be defeated or destroyed only by showing that such right was first enjoyed at any time prior to such period of twenty years ; and where it has been enjoyed for full forty years the right shall be absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing." Prescription is a title by long usage, and though it depends on usage, it is distinguishable from custom in this, that custom is a *local* usage, and prescription is a *personal* usage, attaching to a man and his ancestors, or those whose estate he has. But it is important to observe that this title is always founded on the *actual usage* of enjoying the thing in question, and without this use and enjoyment, a mere bare claim, however often repeated, or long continued, and whether its validity had been questioned or not, will not suffice to establish a prescriptive right.* The enjoyment must

* Stephen's Black. 2, 35.

have been constant and peaceable, of the duration required by the statute, certain and not vague in its nature; and is only capable of giving a title to supply the loss of a supposed grant, which conveys incorporeal rights.

A private right of way may also be established by proof of a custom, if such can be shown to have prevailed for a sufficient length of time with respect to *all* the inhabitants of a certain parish, village, hamlet, district, &c. The immemorability of a local custom may be sufficiently proved by living witnesses, who can attest its continued existence for a long time back. The general rule is that if the exercise of a custom at a distant time be shown, and there is no evidence that at any certain time it did not exist, a jury may properly infer that it went back as far as the time of Richard I., which is the time of legal memory. But as rights of way to and from collieries are rarely, if ever, dependent on custom, this branch will not be more particularly considered.

A right of way may also arise from necessity. Thus, if a man grants to another a piece of ground in the middle of his field he at the same time tacitly and impliedly gives me a way to come at it, for that is necessary to its enjoyment, and that grantee may cross his land for that purpose without trespass. For when the law gives a right it gives everything necessary to its exercise.* This right of way thus impliedly granted or reserved, is called

* 1 Saund. Wms. 323. Step. Black, 2, 11.

“a way of necessity.” But a “way of necessity” is limited by the necessity which created it, and when such necessity ceases, the way also ceases.

In the two former classes of ways, where grants are actually in existence, or are presumed from usage and custom to have been originally made, though now lost, the right of way so given may be either *appurtenant* to some particular house or land, or “in gross,” and annexed to the person of the grantee, without respect to any house or land of which he may be the owner or occupier.

If a grant of a right of way be made by a person who has only a *limited* estate in the land over which the way passes, it is effectual only during the continuance of the estate of the grantor. Suppose a claim to a right of way to be set up by a prescriptive title, and enjoyment of it for twenty or forty years be proved, yet if it appears that the land over which such right is claimed has, during the whole or part of the twenty or forty years, been in the occupation of a party who had only a *limited* estate in it, not only is no right of way acquired against the reversioner, but no right whatever is gained by the user.

The leading cases upon points arising in connection with claims to private rights of way are the following:—Under the grant of a “free and convenient way,” with liberty to make and lay causeways for the purpose of carrying coals, the grantee was held to have the right to lay a framed waggon way.* But

* *Seahouse v. Christian*, 1 T. R. 560.

it was also held that he had no right to make a transverse road, *across* the land, under a grant which gave a right of way in, through, and along it, the land consisting of a narrow strip.

In a much later case it appeared that land was conveyed, excepting and reserving all mines of coals within that land, together with sufficient way-leave and stay-leave to and from the said mines, with liberty of digging and sinking pits. The question was raised whether under this reservation of a sufficient way-leave, the coal owner had now a right to make a railway for the purpose of carrying the coals from the mines for shipment, with cuttings and embankments, and fenced in so as to exclude the owner of the soil. It was held, however, that the right of the coal owner was not confined to such ways as were in use at the time of the grant. The judgment of the Court in this case was delivered by Mr. Baron Parke, who observed (after disposing of several other points) :—“ This reservation is to be construed, according to the rule laid down in Shepherd’s Touchstone, 100, in the same way as a grant by the owner of the soil of the like liberties, ‘ for what will pass by words in a grant will be excepted by like words in an exception.’ Now the reservation is of the right to dig a pit or pits, and of *sufficient* way-leave and stay-leave connected with those pits. There is no doubt that the object of the reservation is to get the coals *beneficially* to the owner of them, and therefore it should seem that there passes by it a right to such a description of way-leaves, and in such a *re*ction, as will be reasonably *sufficient* to enable the

coal owner to get, from time to time, all the seams of coal to a reasonable profit ; and therefore the owner is not confined to such description of way as is in use at the time of the grant, and in such direction as is then convenient. It is found that without a railway for shipment the lower seams could not be worked without loss. We cannot say that there has been anything improper in the direction or mode of construction of the railway. The true question is whether the entire railway is convenient."*

There are a few other points in connexion with private rights of way which may be briefly noticed. Under a right of way over a close to a particular place, a man cannot justify going beyond that place. Nor is it any answer to an action in trespass that the defendant has a right of way over part of the plaintiff's land, and that he had gone upon the adjoining land, because the way was impassable from being overflowed by a river ; for he who has the use of a thing ought to repair it ; and for anything that appeared the overflowing might have happened by the neglect of the defendant, who, it did not appear, had no other road.† Unity of possession operates to extinguish a right of way by prescription ; in other words, if the party entitled to a right of way becomes the owner of the land over which it passes, the right of way is extinguished if the party has the *same extent of interest* in the land and in the way. But if the one be held for an estate different in extent of duration from the

* *Dand v. Kingscote*, 6 M. & W. 174.

† *Taylor v. Whitehead*, 2 Doug. 745.

other, the right is only *suspended* during the union of the two interests. Even where a right of way is extinguished by unity of possession, it will in some cases revive upon a severance of that unity, as by partition among parcelers, &c. The particular rights of the grantor of a private way continue to exist, although the owner of the land may have dedicated it to the public as a highway.

By the general Inclosure Act, all roads, public and private, within the district, not set out by the commissioners, are declared to be extinguished.

The grantee cannot throw the burden of repairing the way upon the grantor, unless by the terms of the grant, as proved by the deed or by usage, the grantor has engaged to enable the grantee to use the way.

If the occupier of the land over which a private way passes, or any other person, obstruct the way, the party entitled to the way may remove the obstruction, and he may also bring an action on the case, or in some cases, an action of covenant against the obstructor. On the other hand, if the occupier of the land resisting the claim of a right of way, bring an action of trespass against the person exercising the alleged right, the defendant may plead in justification, a title founded on prescription, grant, reservation, or statute.

If a person agree for a lease of a way-leave, at a yearly rent, and if, afterwards, without any fault either of the proposed lessor or lessee, events happen which would render the proposed way-leave useless, a specific performance will not be decreed.*

* White's case, 3 Swanst. 108.

These are the leading rules which settle the rights connected with ways on the surface. The words of the Act for shortening the time of prescription, as it affects rights of way, will be found under that head. A form of the lease of a way-leave is also inserted in the Appendix. As to way-leaves underground, they are generally made the subject of special stipulations, and in consequence, it is presumed, of this practice, there has been comparatively little litigation on the subject, and no leading case can be brought forward upon any peculiar points arising out of disputes under this head.

CHAP. VII.

RIGHTS CONNECTED WITH THE FLOW OF WATER.

By the law of England water flowing in a stream is *publici juris*, that is to say, a thing the property in which belongs to no individual, but the use of it to all. An individual can only acquire a right to it, by applying so much of it as he requires for a beneficial purpose, leaving the rest to others, who, if they acquire a right to it by subsequent appropriation, cannot lawfully be disturbed in the enjoyment of it. *Primâ facie* the proprietor of each bank is the proprietor of half the land covered by the stream, but there is no property in the water itself. Every proprietor has an equal right to use the water. Consequently, none can have the right of using the water to the prejudice of another, nor can he lawfully diminish the quantity which would otherwise descend to those below, nor throw back the water upon those above, unless he has a grant or licence from the persons affected by such acts, or by proving an uninterrupted enjoyment of such right for twenty years. This period of twenty years has been adopted in the statute 2 & 3 Wm. IV. c. 71, for shortening the time of prescription in certain cases. The second section

enacts that "no claim to any watercourse, or the use of any water, where such shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated by showing only that it was at first enjoyed at any time prior to such period ; but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated ; and when such shall have been enjoyed for the full period of forty years, the right shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing." For the other enactments or provisoies of this statute the reader is referred to the chapter on Prescription.

After the erection of works, and the appropriation, by the owner of the land of the water flowing over it, if a proprietor of other land afterwards takes what remains of the water before unappropriated, the owner above, whatever he might have done before, cannot afterwards appropriate more to himself than he had done.*

The exclusive right to a flow of water once acquired can only pass by grant as an incorporeal hereditament. A licence, verbal or otherwise, to use or take the water at any place, may be revoked, even without an express power of revocation being reserved, unless works have been constructed and expenses incurred on the faith of it.†

* *Bealy v. Shaw*, 6 East, 208.

† *Mason v. Hill*, 5 B. & Ad. 1.

No proprietor of the banks of a stream has a right to diminish the quantity or injure the quality of the water, to the detriment of other owners on the other parts of the banks. If he does so, the remedy is by way of an action on the case for the special injury. For in such a case the plaintiff must be able to show either that some benefit arose to him from the water going through his land, of which he has been deprived, or at least that some deterioration was occasioned to the premises by the abstraction of the water. If the proprietor can thus show that he is injured by the diversion of the water, it is no answer to the action to show that the defendant was the first person who appropriated it to his own use, unless he has had twenty years' undisturbed enjoyment of it in its altered course. In short, any appropriation of water which injures any other proprietor, must be set up by grant or prescription, and until so established may be successfully resisted.* But the alleged injury must not be imaginary. If the water be deprived of noxious matter (produced by a discharge of such matter into it above), before it reaches the land of an owner below, there can be no ground for action.†

If water be heated, and sent down to a proprietor below in that heated state, a sufficient injury is thereby incurred to form the ground of an action.‡ But undoubtedly the right to disturb flowing water and render it noxious by the washing of minerals, or to

* *Bealy v. Shaw*, 6 East, 208.

† *Elmhirst v. Spencer*, 2 Mac. & G. 45.

‡ *Mason v. Hill*, *supra*.

alter the rate of its current, or to divert and discharge it lower down, may be acquired by uninterrupted user.*

But in a recent case, *Acton v. Blundell* (12 M. & W. 324), it has been held that the owner of land through which water flows in a *subterraneous* course, has no right or interest in it which will enable him to maintain an action against a landowner who, in carrying on mining operations in his own land in the usual manner, draws away the water from the first-mentioned owner and lays his well dry; the well having been sunk within twenty years from the commencement of the action, and therefore no title having been acquired by user and prescription. A vast amount of learning was brought to bear in the discussion of this leading case, which is a very important one. The plaintiff had brought his action for the disturbance of certain underground springs, streams, and watercourses, which he said ought of right to flow and percolate into his closes for supplying certain mills with water. He further complained of the draining off of a spring or well of water, in a close of his, by the possession of which close, as he alleged, he ought, of right, to have the benefit and enjoyment of that spring or well. The defendants denied the alleged rights. It was proved that *within twenty years from the commencement of the action*, a former owner and occupier of the plaintiff's land had sunk a well in that land in order to raise water to work his mill, and that the defendants about sixteen years

* *Wright v. Williams*, 6 M. & W. 77.

afterwards had sunk a coal-pit about three quarters of a mile from the plaintiff's well, and three years afterwards sunk a second, at a less distance, the consequence of which two sinkings was that the supply of water was rendered insufficient for the purposes of the mill. The question raised was whether the right to the enjoyment of an underground spring, or of a well supplied by such a spring, is governed by the same rule of law as that which applies to a water-course flowing on the surface. Lord Chief Justice Tindal, in delivering the judgment of the Court in error, said, "The rule of law which governs the enjoyment of a stream flowing in its natural course over the surface of land belonging to different proprietors is well established. Each proprietor of the land has a right to the advantage of the stream flowing in its natural course over his land, to use the same as he pleases for any purposes of his own not inconsistent with a similar right in the proprietors above and below, so that neither can any proprietor above diminish the quantity or injure the quality of the water which would otherwise naturally descend, nor can any proprietor below throw back the water without the licence or the grant of the proprietor above. And if the right to the enjoyment of underground springs or to a well supplied thereby is to be governed by the same law, then the defendants could not justify the sinking of the coal-pits.

"But we think that there is a marked and substantial difference between the two cases. The ground and origin of the law which governs streams running in their natural course would seem to be this: that

the right enjoyed by the several proprietors of the lands over which they flow is and always has been public and notorious ; that the enjoyment has been long-continued and uninterrupted, each man knowing what he receives and what has always been received from the higher lands, and what he transmits and what has always been transmitted to the lower. The rule therefore either assumes for its foundation the implied assent and agreement of the proprietors of the different lands from all ages ; or perhaps it may be considered as a rule of positive law.

“ But in the case of a well sunk by the proprietor in his own land, the water which feeds it from a neighbouring soil *does not flow openly* in the sight of the neighbouring proprietor, but through the hidden veins of the earth beneath its surface. No man can tell what changes these underground sources have undergone in the progress of time. It may well be that it is only yesterday’s date that they first took the course and direction which enabled them to supply this well. Again, no proprietor knows what portion of water is taken from beneath his own soil, how much he gives originally, or how much he transmits only, or how much he receives. On the contrary, till the well is sunk and the water collected into it, there cannot properly be said, with reference to the well, to be any flow of water at all. In the case therefore of the well, there can be no ground for implying any mutual consent or agreement, for ages past, between the owners of the several lands beneath which the underground springs may exist, which is one of the foundations on which the law as

to running streams is supposed to be built ; nor, for the same reason, can any trace of a positive law be inferred from long-continued acquiescence and submission, whilst the very existence of the underground springs, or of the well, may be unknown to the proprietors of the soil.

“ But the difference of the two cases with respect to the consequences, if the same law is applied to both, is still more apparent. In the case of the running stream the owner of the soil merely transmits the water over its surface ; he receives as much from his neighbour above as he sends down to his neighbour below : he is neither better nor worse ; the level of the water remains the same. But if the man who sinks a well in his own land can acquire by that act an indefeasible and absolute right to the water that collects in it, he has the power of preventing his neighbour from making any use of the spring in his own soil which shall interfere with the enjoyment of the well. He has the power still further of barring the owner of the land in which the spring is first found, or through which it is transmitted, from draining his land for the proper cultivation of the soil, and this by an act which is voluntary on his part, and which may be entirely unsuspected on the part of his neighbour. He may impose on such neighbour the necessity of bearing a heavy expense, if the latter has erected machinery for the purpose of mining, and discovers when too late that the appropriation of the water has already been made. The advantage on one side and the detriment on the other may bear no proportion. The well may be sunk to

supply a cottage, or a drinking place for cattle; whilst the owner of the adjoining land may be prevented from winning metals and minerals of inestimable value. And, lastly, there is no limit of space within which the claim of right to an underground spring can be confined: in the present case, the nearest coal-pit is at the distance of half a mile from the well. It is obvious that the law must equally apply if there is an interval of many miles."

The Court of Error for these reasons decided that the case did not fall within the rule which obtains as to surface streams, and that it was not to be governed by analogy therewith. But at the close of this judgment the court added, "We intimate no opinion as to what might be the rule of law if there had been an uninterrupted user of the right for more than the last twenty years, but, confining ourselves to the facts stated, we think the present case is not to be governed by the law which applies to rivers and flowing streams, but that it rather falls within that principle which gives to the owner of the soil all that lies beneath his surface; that the land immediately below is his property, whether it is solid rock, or porous ground, or venous earth, or part soil, part water; that the person who owns the soil may dig therein, and apply all that is found there to his own purposes, at his own free will and pleasure; and that if, in the exercise of such right, he intercepts or drains off the water collected from underground springs in his neighbour's well, this inconvenience to him falls within the description of *damnum absque injurid* which cannot become the ground of an action."

Although the court reserved their opinion if a user of this well for upwards of twenty years had been proved, yet undoubtedly the course of the reasoning, and the spirit and tenor of the judgment, are against the acquisition of any such right.

The later cases on this subject are those of *Embrey v. Owen* (20 Law Journal, Ex. 212), in which an action was brought by the occupier of a mill against the defendant for diverting part of the water for the irrigation of his land above. It was proved that this diversion was not continuous, but only intermittent, and except a small quantity which was absorbed in irrigation, it was returned again to the stream, without causing any diminution of water cognisable by the senses. The Court of Exchequer decided that as no damage was done to the working of the plaintiff's mill, and as the diminution of water was not perceptible, the irrigation was a reasonable use of the water, and was not an infringement of the plaintiff's right in respect of his mill. But care is taken in this judgment to show that an action may be maintainable for the infringement of a right, though there is no actual damage sustained.

Another case is that of *Sampson v. Hoddinot* (26 Law Journal, C. P. 148). In that case the defendant also possessed a mill on a stream, and he had not only used the water for his mill, but had latterly diverted it for the purpose of irrigating his meadows. The plaintiff had been accustomed to irrigate his own meadows by the same stream. It appeared that by the acts of the defendant the water flowing down to the plaintiff was not sensibly

diminished in quantity, but it arrived later in the day, and he was thus prevented from using it as beneficially as he otherwise would. The court held that the defendant had by the irrigation of his meadows detained the water for a time, and in a manner *necessarily injurious* to the natural right of the plaintiff, and that the latter was entitled to maintain his action.

In another case, *Dudden v. Guardians of the Clutton Union* (26 Law Journal, 146), the Court of Exchequer decided that a person has no right to take water from a spring-head where it rises from the ground, so as to obstruct its flowing into its natural course and stream, to the injury of owners on the banks. The defendants had done this by tanks placed close to a spring, to the injury of the owner of a mill below. The Court of Exchequer held that a stream may be said to begin at the spot where the water rises to the surface, and that a person is not justified in diverting it as it springs from the ground, and that the action was therefore maintainable.

Still more recently, in the case of *Chasemore v. Richards* (29 Law Journal, Ex. 81), the House of Lords have decided that an action is not maintainable against a person who, by digging a well, cuts off water from a stream which would otherwise have flowed into it. The rules applicable to the enjoyment of a natural stream do not apply to underground water, not proceeding in any defined course, but percolating through the strata in all directions, and ultimately reaching some stream. In such a case the owner may dig and intercept such water, though the

flow of the stream be sensibly affected thereby, and though the water is taken not for the use of the owner's own land, but for extraneous purposes, and to an enormous extent.

In delivering the unanimous opinion of the judges in the House of Lords, Mr. Justice Wightman said (*inter alia*) :

“ The question is, then, whether the plaintiff has such a right as he claims *jure naturæ* to prevent the defendant sinking a well in his own ground at a distance from the mill, and so absorbing the water percolating in and into his own ground beneath the surface, if such absorption has the effect of diminishing the quantity of water which would otherwise find its way into the river Wandle, and by such diminution affects the working of the plaintiff's mill. It is impossible to reconcile such a right with the natural and ordinary rights of landholders, or to fix any reasonable limits to the exercise of such a right. Such a right as that contended for by the plaintiff would interfere with, if not prevent, the draining of land by the owner. Suppose, as it was put at the bar in argument, a man sank a well upon his own land, and the amount of percolating water which found its way into it had no sensible effect on the quantity of water in the river which ran to the plaintiff's mill, no action would be maintainable ; but if many landowners sank wells upon their own lands, and thereby absorbed so much of the percolating water by the united effects of all the wells as would sensibly and injuriously diminish the quantity of water in the river, though no one well

alone could have that effect, could an action be maintained against any one of them ? and, if any, which ? —for it is clear that no action could be maintained against them jointly. In the course of the argument one of your Lordships (Lord Brougham) adverted to the French artesian well at the Abattoir de Grenelle, which was said to draw part of its supplies from a distance of forty miles under ground, but, and as far as is known, from percolating water. In the present case, the water which finds its way into the defendant's well is drained from and percolates through an extensive district, but it is impossible to say how much from any part. If the rain which has fallen may not be intercepted whilst it is merely percolating through the soil, no man could safely collect the rain-water as it fell into a pond, nor would he have a right to intercept its fall before it reached the ground by extensive roofing, from which it might be conveyed by tanks, to the sensible diminution of water which had, before the erection of such impediments, reached the ground, and flowed to the plaintiff's mill. In the present case, the defendant's well is only a quarter of a mile from the river Wandle ; but the question would have been the same if the distance had been ten or twenty or more miles distant, provided the effect had been to prevent underground percolating water from finding its way to the river and increasing its quantity, to the detriment of the plaintiff's mill. Such a right as that claimed by the plaintiff is so indefinite and unlimited, that, unsupported as it is by any weight of authority, we do not think that it can be well founded,

or that the present action is maintainable ; and we therefore answer your Lordships' question in the negative."

We have seen, in treating of the subject of water, that all lands must receive and pass on natural flowing streams which come down from higher levels. But where the owner of a coal-field excavated his coal, and in so doing left large hollows which filled with water, and then, when the adjoining landowner proceeded to work his coal, the subterraneous water from the hollows flowed into his workings and flooded them, it was held that he had no right of action for the damage.*

Defilement of Water.—Every owner of the bank of a flowing stream has a right to the flow of the stream through his land in its natural purity. If an owner of the bank higher up throws dirt and ashes or gas refuse into it, so as to defile the water and make it unfit for use, to the damage of another proprietor who has been in the habit of using the water, an action is maintainable for the injury, unless a title to so defile the water by grant or prescription can be shown.† For there is no doubt that a right to pollute and foul a stream with all sorts of refuse may be established by proof of the continued and uninterrupted use of the stream as a drain and sewer for twenty years.

Artificial Streams.—It is not only necessary to consider the law relating to flowing streams and

* *Smith v. Kenrick*, 7 C. B. 565.

† *Murgatroyd v. Robinson*, 26 Law Journ. Q. B. 233.

natural springs, but also that relating to *artificial* streams or watercourses. "In mining operations it is always necessary to keep the works free from water, and often to acquire a large supply of water for general purposes. In effecting these objects many natural springs and streams are often directed or accumulated into one channel; or are otherwise so diverted or disturbed as very much to affect the interests of adjoining landowners. The right of drawing, discharging, or otherwise conducting water from its natural bed, over the lands of others, by artificial channels, is strictly an easement, and like other easements may be acquired by express grant, or sufficient uninterrupted user."* The leading case upon this subject is the great case of *Arkwright v. Gell* (5 M. & W. 203, and 8 Law Journal, Exch.). In that case an action was brought by the plaintiff to recover damages for the diversion of some water which had formerly been conducted to his mills at Cromford, in Derbyshire. The circumstances of the case were these. In the year 1705 certain persons extended an existing underground drain, called the Cromford Sough, for the purpose of relieving from water part of the mineral field in the wapentake of Wirksworth. The company had an agreement with the owners of the mines lying near to the sough to remunerate them by certain quantities of ore raised from the mines thus benefited. The sough discharged its waters into a stream called Bonsall Brook. Below

* Bainbridge on Mines, 106.

the junction stood an ancient corn mill, which was worked by the united power of the two currents. In 1738 the owners of the sough and the ~~composition in~~ ~~ore granted a lease of them for 99 years~~, with covenants to keep the sough in repair, &c. In 1771 the lord of the manor, being owner of the land through which the sough was made, and of a piece of land between the mouth of the sough and Bonsall Brook, leased them to Sir R. Arkwright (the father of the plaintiff), together with the water issuing from the sough. In 1772 he erected cotton mills on this piece of land, partly on the site of the above-mentioned ancient corn mill. This lease contained a proviso that if, by the bringing up of any other sough, or by any other unforeseen or unavoidable accident, the stream from the Cromford Sough should be taken away or lessened, the lessee should have power to take down the mills and rebuild them on another site. In 1789 the lessee purchased the absolute interest in the land demised, and in so much of that through which the sough was laid as was within the manor of Cromford. In the meantime another company of adventurers had begun to construct another mining sough, called the Meer Brook Sough, on a much lower level, in the adjoining parish of Wirksworth, for the purpose of draining a larger portion of the mineral field, under a similar licence from the same mine proprietors who used the Cromford Sough. Accordingly they so extended the Meer Brook Sough that in 1836 the Cromford Sough was drained of its waters, and the water supplying the cotton mills was diverted. All the known authorities, ancient and

modern, were cited and examined, and the subject was thoroughly considered by judges distinguished for ability and learning.

The judgment of the Court of Exchequer was delivered by Mr. Baron Parke, who (*inter alia*) observed : "The stream upon which the mills were constructed was not a natural watercourse, to the advantage of which, flowing in its natural course, the possessor of the land adjoining would be entitled. This was an *artificial* watercourse, and the sole object for which it was made was to get rid of a nuisance to the mines, and to enable the proprietors to get the ores which lay within the mineral field drained by it. The flow of water through that channel was, from the nature of the case, of a temporary character, having its continuance only whilst the convenience of the mine owners required it, and in the ordinary course it would most probably cease when the mineral ore above its level should have been exhausted. That Sir R. Arkwright contemplated the discontinuance of this watercourse there is evidence in the lease of 1771 ; and that such an event was not improbable appears from a clause in the Cromford Canal Act. What, then, is the species of right or interest which the proprietor of the surface where the stream issued forth, or his grantees, would have in such a watercourse at common law, and independently of the effect of user under the statute 2 & 3 Will. IV: lxxi. ? He would only have a right to use it for any purpose to which it was applicable, so long as it continued there. A user for twenty years, or a longer time, would afford no presumption of a grant of the right to the water in

perpetuity. For such a grant would be neither more nor less than an obligation on the mine owner not to work his mines by the ordinary mode of getting minerals, below the level drained by that sough, and to keep these mines flooded up to that level, in order to make the flow of water constant, for the benefit of those who had used it for some profitable purpose. How can it be supposed that the mine owners could have meant to burden themselves with such a servitude so destructive to their interests? and what is there to raise an inference of such an intention? Several instances were put, in the course of the argument, of cases analogous to the present, in which it could not be contended for a moment that any right was acquired. A steam-engine is used by the owner of a mine to drain it, and the water pumped up flows in a channel to the estate of the adjoining landowner, and is there used for agricultural purposes for twenty years. Is it possible, from the fact of such user, to presume a grant from the owner of the steam-engine of the right to the water in perpetuity, so as to burden himself and the assigns of his mine with the obligation to keep a steam-engine for ever, for the benefit of the landowner? Or if the water from the spout of the eaves of a row of houses was to flow into a yard and be there used for twenty years by its occupiers for domestic purposes, could it be successfully contended that the owners of the houses had contracted an obligation not to alter their construction so as to impair the flow of water? Clearly not. In all, the nature of the case distinctly shows that no right is acquired as *against the owner of the property* from

which the course of water takes its origin ; though as between the *first and any subsequent appropriator* of the watercourse itself such a right may be acquired. So in this case Sir R. Arkwright, by the grant from the owner of the surface, acquired a right to use the stream *as against him* ; and if there had been no such grant, he would by twenty years' user have acquired the like right *as against* such owner. But the user, even for a much longer period, whilst the flow of water was going on for the convenience of the mines, would afford no presumption of a grant at common law *as against the owner of the mines*.

“ It remains to be considered whether the statute 2 & 3 Will. IV. lxxi. gives to the plaintiff and those who claim under him any such right. We are clearly of opinion that it does not. The whole purview of the Act shows that it applies only to such rights as would before the Act have been acquired by the presumption of a grant from long user. The Act requires enjoyment for different periods ‘ without interruption,’ and therefore necessarily imports such a user as might be interrupted by some one capable of resisting the claim ; and it also requires it to be ‘ of right.’ But the use of the water in this case could not be the subject of an action at the suit of the proprietors of the mineral field lying below the level of the Cromford Sough, and was incapable of interruption by them at any time during the whole period by any reasonable mode, and as against them it was not ‘ of right ;’ they had no interest to prevent it, and until it became necessary to drain the lower part of the field, indeed at all times, it was wholly immaterial to

them what became of the water, so long as their mines were freed from it.

“ We therefore think that the plaintiffs never acquired any right to have the stream of water continued in its former channel, either by the presumption of a grant or by the recent statute, as against the owners of the lower level of the mineral field, or the defendants, acting by their authority ; and therefore our judgment must be for the defendants.”

It has recently been decided that if an artificial stream has been used and enjoyed in such a manner and for such a time as would give adverse rights in the case of natural streams, the same may be acquired in the artificial stream. (Sutcliffe v. Booth, 32 Law Journal, Q. B. 136.)

CHAP. VIII.

PARTNERSHIP IN COLLIERIES.

IT would carry this treatise beyond its intended limits to go fully into the law of partnership. But as it is designed to be a help to private individuals concerned in collieries, it may be useful to insert a sketch of the legal rules and doctrines which govern the relation of partners.

Partnership is a contract, by which two or more persons join together their money, goods, or labour, for carrying on some business or undertaking in common, upon an agreement that the gain or loss shall be divided proportionably between them. Although the partners' shares need not be equal, they must be joint.

Public trading companies, established by Letters Patent, or Act of Parliament, or registered under the Limited Liability Act (to be hereafter noticed), do not, for the most part, fall under the general law of partnership, by which each individual partner is personally liable for the whole of the debts of the partnership.

The community of profit is the criterion whereby to ascertain whether a contract be really one of partnership. For one partner may stipulate to be free from

loss, and that stipulation will hold good as between himself and his companions, but it will not diminish his liability to others. So one partner may contribute all the money, all the stock, and all the labour necessary for the purposes of the firm ; but if there be not a community of profit there is no *real* partnership. On the other hand, where that community of profit exists, each of the sharers in it is, and may be treated by the creditors of the whole body as, a partner, though he may have stipulated with his companions not to be responsible for the engagements entered into by them with strangers, to whom he will, nevertheless, be liable. And justly so ; for by taking part of the profits, he takes part of that fund from the creditors which is their security for the payment of their debts.

It is also a rule that to constitute such a community of profit as is here intended, a partner must share in the profits of his companions *as a principal*. That is, he must not be a mere agent, factor, or servant, receiving in lieu of wages a sum proportioned to the profit gained by his employers. The distinction is fine. For if a servant or agent stipulate for a share in the profits, and so entitle himself to an account of them, he is a partner as to strangers, though he may not be so as between himself and his employers.

Nominal Partners. — Though partnership is, as between the partners themselves, the result of a contract, yet a man may, without a contract, impose upon himself the liabilities of a partner with regard to third persons. The law considers that he who lends his name and credit to a firm, or holds himself out to the world as a partner in it, is liable to its

engagements, whether he has any real interest in it or not. Such a man is called a "nominal partner." A sleeping partner is the converse of the nominal one. The sleeping partner has an actual interest in the concern although his name does not appear, while the name of the nominal partner appears although he has no interest in the partnership property.

Partnership how formed.—To constitute an ordinary partnership no charter or licence is necessary, nor anything more as affects the world than the bare consent of the parties intending to combine. There is usually some deed of copartnership entered into, but it is not one of those contracts which the law requires even to be in writing ; and may therefore be concluded by mere words, or inferred from the acts of the parties.

Rule as to the Succession to Share of a Deceased Partner.—Partners are jointly, and (in the absence of evidence to the contrary).are taken to be equally interested in the partnership stock and effects, subject to the application of a well-known maxim, "Jus accrescendi inter mercatores locum non habet." The ordinary rule of law governing the case of two or more persons who are jointly possessed of property is this, that the entire right to it, on the decease of any of them, remains to the survivors, and finally to the last survivor. This is called the "jus accrescendi." But to this rule there is an exception in the case of partners in trade. It is laid down in Coke upon Littleton, 132 A, that " the wares, merchandize, debts, or duties, which they have as joint merchants or partners, shall not survive, but shall go

to the executors of him that deceaseth; and this is by the law merchant, which is part of the laws of the realm, for the advancement and continuance of commerce and trade." Of the existence of this exception there is no doubt. But it has been questioned whether it can be enforced in Courts of Common Law. It seems to be admitted on all hands, that if *real* property be held in joint tenancy for the purpose of trade, its exemption from the common rule relating to survivorship can be enforced only in Equity. The only doubt, therefore, on the exception relates to the enforcement of it as regards personal property. As to real property, however, held in partnership, there is no doubt that the exemption of it from the ordinary rule of survivorship can only be enforced in Equity. But a question sometimes arises whether the separate share of each partner is to be considered as real or as personal property, when such property has always been personal in its enjoyment, though freehold in its nature. The rule now is that all property of whatever nature bought with the cash and for the purposes of a trading partnership, must in Equity be looked upon as personal; and that as there can be no right of survivorship in it, a partner's share will on his death pass, not to the surviving partners, nor to his heir, but to his personal representative. The surviving partners will, indeed, be the owners of such property in the eye of the Common Law, and hold the legal estate, but in Equity they will hold it in trust for the benefit of the personal representative. If the partners have stipulated that freehold lands purchased by them shall

not be subject to the application of this equitable doctrine, but follow the ordinary rules respecting property of this kind, or if they so act that such an agreement may be reasonably inferred from their conduct, in such a case the rule of Equity yields to the ordinary course of law, coupled with the intention of the parties.*

Duration and Dissolution of Partnership.—It often happens that when a partnership is formed, the parties agree that it shall last only for a stated period. There are also cases in which, without any express provision, an implied contract as to its duration may arise. For instance, partners may purchase leasehold interests of such a description as to raise a fair presumption that they intended to continue the partnership so long only as those leases should endure. If a limit, express or implied, to the term of partnership be thus defined, the contract will of course be dissolved on its arrival. It may also be terminated by mutual consent, and Courts of Equity will put an end to it by decree, in cases where the partnership undertaking turns out to be impracticable, or where one of the partners becomes an incurable lunatic, or is guilty of gross misconduct, such as refusing to account for his receipts. If no limit was fixed, it is called a partnership *at will*, and may be dissolved at a moment's notice, at the individual pleasure of either party. In all cases it is dissolved by the bankruptcy of any one of the partners, followed by adjudication, or by his outlawry, or attainder of treason or felony. The death of one of

* Smith's Mercantile Law, 13.

the partners operates, of course, as a dissolution, for his executors cannot represent him. The marriage of a female partner has the same effect.

When any of these circumstances occur, the entire firm is dissolved, unless the contrary has been expressly provided for. But the remaining partners may, of course, come to a new agreement to carry on the business on the old or new terms.

Notice of Dissolution.—Such are the modes in which a partnership may be dissolved as between the partners themselves. Those who wish to end it as to strangers should give notice to the world of its dissolution.

The rights and liabilities of partners among themselves are well defined and understood. In the absence of agreement, a partner's right seems like that of other joint owners ; if there be two, an undivided moiety ; if three, a third, and so on. But Equity, which exercises a peculiar jurisdiction over the accounts of partners, looks on the right of each in the joint stock as subject to the state of those accounts. Thus, as between himself and his companions, his interest may amount to little or nothing, or he may even be indebted to the partnership, which in Equity is held to be so distinct from the individuals who compose it, that each may borrow or buy from the firm, and the firm from him.

To ascertain each partner's share in the joint stock, it is necessary to know what property is comprised under that denomination. Partnerships may and do exist in which all the capital is contributed by one, and nothing but his labour by the other, who, not-

withstanding, is entitled to consider the capital as joint stock, and claims an equal share of it or its produce. The law in all these cases moulds itself to the intention of the parties, when that can be ascertained.

Good Faith required.—In the conduct of partners to each other the most scrupulous fidelity must be observed. One is not allowed to treat privately and behind the backs of his copartners for any advantage to himself at the expense of the rest ; as, for instance, for a lease of the premises where the joint business is carried on. If he does so, and obtains a lease in his own name, it is a trust for the partnership. In short, the most scrupulous good faith is required by Courts of Equity, which will even declare the partnership dissolved in case of any flagrant breach of fidelity.

Where articles of partnership are drawn up, they must, of course, be acted upon, as far as they will go. In construing these instruments Equity looks mainly to the intention of the parties, as evidenced by their conduct. If it find that some of the provisions have been purposely and uniformly disregarded, it will consider them as totally dispensed with.

Action of Courts of Law and Equity.—The rights of partners may be enforced at law, if there be a covenant for the performance of the duty neglected, by an action brought upon it for damages for any breach of it. But the general rule is, that between partners no account can be taken at law, nor any action maintained for work and labour expended on account of the partnership. But though courts of law do not examine the accounts of partners, Courts of Equity will do so. For this purpose one partner

may file a bill against another, praying for an account to be taken. And on taking this account, the Court has power to order a sale of the partnership effects and a division of the produce, in the proportion in which it considers each partner entitled. Where one partner has committed such breaches of duty as would warrant a decree for a dissolution, a Court of Equity will interfere summarily, by injunction ; as where one partner has involved the partnership in debt, or has himself become insolvent, the courts will interfere to restrain him from drawing, accepting, or indorsing bills in the name of the firm, from receiving the partnership debts, and from continuing to carry on the business by entering into new contracts. It will also restrain the application of the partnership property to a use not warranted by the articles ; or an execution against the partnership property for the separate debt of one partner.

Powers of each Partner.—Generally, one partner has an implied authority to bind the firm by contracts relating to the partnership, and he can do this by mere verbal or written agreements, or by negotiable securities, such as bills of exchange or promissory notes. One partner may pledge the credit of the firm to any amount. It is a general rule that each partner is the accredited agent of the rest, whether they be active, nominal, or dormant partners, and has authority as such to bind them in the manner stated above to any person dealing *bond fide*. Although it may have been agreed among themselves that he shall have no such authority, yet they will be bound, unless the party dealing with him has notice of the

arrangement. But one partner has no power to bind his copartner by *deed*, unless he have express authority by deed for that purpose. It seems, however, that a release by deed by one of several partners to a debtor of the firm will bind the firm ; but if such a release be fraudulent, it will be set aside by a Court of Equity.

It must be observed that in order to bind the firm, a contract entered into by one partner must be respecting the partnership business.

On the other hand, when the transaction appears to have nothing to do with the partnership, the firm will not be bound without special circumstances.

“ It has,” said Lord Chief Justice Abbot, “ undoubtedly been held that in a matter wholly unconnected with the partnership, one partner cannot bind the other ; but the true construction of the rule is this, that the act and assurance of one partner, made with reference to business transacted by the firm, will bind all the partners.”

Liabilities of Partners.—A dormant partner is in all cases liable for the contracts of the firm during the time that he is actually a partner, and a nominal partner is in the same manner liable during the time that he holds himself out to the world as a partner. The firm will not be bound by any contract made with one partner as an individual, and on his own account, though he may afterwards impart to them the benefit derived from it. A partner will be liable in respect of a fraud committed by his copartner, if committed in the capacity of partner, in contracts relating to the copartnership made with third per-

sons. Thus, if a partner purchase goods, such as are used in the business, and fraudulently convert them to his own use, the innocent partner, provided there be no collusion between the seller and buyer, is liable for the price of the articles.

Negotiable Instruments.—Again, one partner may bind the firm by circulating negotiable instruments on its behalf; that is, by negotiating them in the name, whatever that may be, in which the partnership is usually carried on. So if a bill be drawn upon the partnership in their usual style and form, and accepted by one of the partners in his own name, it will bind them all. But when the trade is carried on in the name of one partner only, a question will arise, whether in negotiating a bill or note he meant to pledge the firm or himself only. This must be solved by extrinsic evidence, for *prima facie* he alone is liable.

If, however, the purposes of the firm do not require that its members should pass negotiable instruments, the implied authority of a partner fails, and the firm will not be bound by his negotiation. Hence it has been decided that the partners in a farming or mining concern have no such authority. The general rules as to such instruments seem to be these:—First, that partners in a trade strictly mercantile have an authority implied by law, to bind each other in bills and notes. Secondly, that partners in some special businesses, such as farming and mining, have *prima facie* no such authority. Thirdly, that this presumption against such authority may be rebutted by

showing that in the particular case it is necessary, or if not necessary, that it is usual.

It is also an essential part of the rule that the person to whom the firm is bound should have dealt *bonā fide*. If he who seeks to charge the firm was himself privy to a fraud, or had good grounds for believing that the partner with whom he dealt had no authority to bind the others, innocent members of the firm will not be allowed to suffer by his fraud or his stupidity. Bills or notes given in the name of the firm cannot be enforced by one who was guilty of fraud in receiving them, or who took them from him knowing they had been so fraudulently received, or even without knowing it, unless he gave valuable consideration. But if they get into the hands of an innocent holder for valuable consideration, they may be enforced by him. And though a transaction may be *prima facie* fraudulent against the firm, yet it will bind them if they afterwards approve of it.

The firm may also in other ways be bound by the conduct of a partner. Thus his admission, acknowledgment, or representation, is evidence against them. Part payment by one of several partners is an answer to the Statute of Limitations as to all, even since the statute of 9 Geo. IV. cap. 14. Notice by or to one partner is equivalent to notice by or to all. And as he is the accredited agent of the rest, they are all liable for breaches of contract and negligent wrongs committed in such his capacity as partner.

Commencement of Liability.—When no time is specified for the commencement of the partnership,

the liabilities of the firm will commence from the date of the deed, and the responsibility of each for the engagements of the others will begin from the commencement of the partnership, however formed. An incoming partner is not liable for the debts contracted before he joins the firm. But if he pay any part of the old debts, or interest on them, he may render himself liable in Equity.

Notice of Retirement.—On the retirement of an ostensible partner, notice of his retirement must be given, or he will be liable to the creditors of the continuing firm for subsequent contracts made by them. Such notices are usually published in the Gazette ; but they will not bind creditors who have dealt with the firm, to whom express notice should be given. To those who have not so dealt, notice in the Gazette will be sufficient.

Third persons have a claim on a dormant partner (that is, one who has an interest in the profits of the concern, but whose name does not appear) for contracts entered into by the firm while he was a member. But if a dormant partner retires from the firm, notice of the fact need not be given by him to creditors to protect himself from subsequent engagements, for when he ceases in fact to be a partner his future responsibility ceases also.

The Contract is joint and several.—The principle is now established that a partnership contract is *several* as well as *joint*. Hence it follows that a partnership creditor may have recourse for full payment to the estate of a deceased partner.

Notice of the death of a partner to the creditors of

the firm is not necessary to free his estate from future liability ; but it is otherwise if one of the surviving partners be executor of the deceased. For a deceased partner sometimes directs his executors to continue his trade, in which case his estate will be liable to the extent to which he directs his assets to be employed.

If the executor exceeds that limit he becomes personally responsible.

Partners often agree among themselves, that after the dissolution the credits of the firm shall be received, and its debts paid, by one of the late partners only. Such an arrangement does not affect their joint responsibility to third persons, unless such person agree to exchange the liability of the firm for that of the single partner.

As an entire firm may be bound, so it may be discharged by transactions with a single partner. Thus payment or satisfaction of a debt by one partner is payment or satisfaction by them all.

A whole firm may become bankrupt, or some or one only of the partners may become so, while the remaining partners may be solvent. Those only of the partners who have committed acts of bankruptcy are to be deemed bankrupts. To constitute two or more bankrupts under one fiat, there must be evidence of a joint trading. Upon the bankruptcy the bankrupt's property vests in the assignees. When the bankruptcy is separate the solvent partners join with the assignees in actions for the recovery of the joint debts. On the bankruptcy of one partner, the solvent partners become tenants in common with the assignees of all the partnership effects.

As to mines, a partnership for working a mine is considered by Courts of Equity in England to be on a footing with any other trading partnership.

Some further considerations follow which have reference specially to partnerships in colliery operations. We have seen that in the inquiry whether a partnership exists the intention of the parties is sought to be ascertained. When mining operations are carried on by several landowners under a partnership deed, or even a verbal agreement from which it may be inferred that they intended to enter into a trading adventure, and to become partners in the ordinary and commercial sense of the word, a partnership will, of course, be set up, both as between themselves and as to all other persons. But supposing there is no express agreement at all, and tenants in common of lands form a mining concern, the question sometimes arises whether such parties are or are not copartners. It seems to depend mainly upon intention, and it may be concluded that when persons acquire interests in lands apparently for the sole purpose of working the minerals in them, they must be considered as entering into a commercial partnership. "It is submitted," says Mr. Bainbridge, "as a general rule, that in all such cases there must not only be an express intention to work the mines, but this object must have been either *solely* contemplated by the parties, or considered as of such paramount consequence as to effectually overbalance any other advantages anticipated from the estate. For mines may form very important considerations in the arrangement of capitalists, and yet their existence

need not preclude the motives which may proceed from the supposed general advantages of the investment.*

Where the parties obtain limited interests in the minerals, without any rights to the general inheritance, and the interests were so acquired for the sole purpose of carrying on mining speculation, they will probably be considered to have entered into a partnership and to be liable for its consequences.

But when the lands have been long in the possession of the parties or those under whom they claim, or have been acquired without any intent to work the mines as an exclusive object, and if, after the workings have been commenced, they have avoided the outward indications of partnership, they would probably be considered simply as the proprietors of land exercising the common acts of ownership according to their respective interests in it.

If the works are carried on by persons as mere owners of land, who work the minerals as part of a general system of management, the shares of each will only be liable for his own engagements and contracts, and to the payment of debts contracted by himself or his agents. In other words, the parties will not, under such circumstances, be liable for the consequences of a trading partnership, nor will the usual incidents of a commercial partnership attach to the concern.

Joint Stock Companies Act.—The cases are so rare in which collieries are held and worked by Joint

* Bainbridge on Mines, 332.

Stock Companies, that a brief notice of the organization required by the recent Acts of Parliament seems all that need be inserted in this treatise. By the 19 & 20 Vict. cap. 47, seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of the Act in respect of registration, form themselves into an Incorporated Company, with or without "limited liability."

By Sect. 4, if more than twenty persons carry on business in partnership, having gain for its object, they shall be severally liable for the payment of the whole debts of the partnership, unless they are *registered* as a company under the Act, or are authorized so to carry on business by some private Act of Parliament, or by Royal Charter, or Letters Patent, or are engaged in working mines within and subject to the jurisdiction of the Stannaries.

By Sect. 5, this memorandum shall contain:—
1st. The name of the proposed company. 2nd. The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be established. 3rd. The objects for which the proposed company is to be established. 4th. The liability of the shareholders, whether to be limited or unlimited. 5th. The amount of the nominal capital of the proposed company. 6th. The number of shares into which such capital is to be divided, and the amount of each share, subject to the following restriction, viz.: that in the case of a company formed

with limited liability, the word "Limited" shall be the last word in the name of the company.

By Sect. 7, the Memorandum of Association shall be in the form marked A. in the schedule of the Act, and shall, when registered, bind the company and the shareholders therein to the same extent as if each shareholder had subscribed his name and affixed his seal thereto.

By Sect. 9, if no special regulations accompany the Memorandum of Association, the regulations contained in the table marked B. shall be deemed to be the regulations for the management of the affairs of the company relating to shares, transmission of shares, forfeiture of shares, increase of capital, general meetings, directors, powers of directors, disqualification, rotation and proceedings of directors, dividends, accounts, audit, notices, and form of balance sheet.

By Sect. 10, the Articles of Association shall be in the form marked C. in the schedule, or as near thereto as circumstances will permit.

By Sect. 12, the Memorandum of Association and the Articles shall be delivered to the Registrar of Joint Stock Companies, who shall retain and register the same.

But the incorporation, regulation, and winding-up of trading companies, whether with limited or unlimited liability, are now within the provisions of a new law, viz., "The Companies Act, 1862."

CHAP. IX.

ON THE CONTRACT BETWEEN MASTERS AND COLLIERs.

IT is very important to the employer of labour, and also to the labourer himself, that they should have a clear comprehension of their mutual rights and duties. To this end it will be useful to state in the outset that a contract or agreement is where a promise is made on one side, and assented to on the other, or where two or more persons enter into an engagement with each other by a promise on either side. This contract, when not made by deed, is not binding in law, unless it is founded upon a *consideration*, by which is meant some compensation or return to be reciprocally given by the person to whom the promise is made. But any kind of reciprocity, whether benefit bestowed or disadvantage sustained, by the person to whom the promise is made, will prevent the contract from being invalid. For instance, if A. promises to bail a man, and does not fulfil his promise, he breaks his word, but is not held responsible in law. But if he promises to bail B. in consideration that B.'s master will indemnify him against the risk, and afterwards refuses to do what he undertook, he is liable to be sued for damages for a breach of such a contract.

In general a simple contract—that is, one that is not set forth in a deed—may be either written or verbal. But the Statute of Frauds (29 Car. II. iii. sect. 4) enacts that in the following cases some note or memorandum of the agreement shall be made in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorised ; namely, 1st, Where a man undertakes to answer for the debt, default, or miscarriage of another ; 2nd, Where any contract is made of lands, tenements, hereditaments, or any interest therein ; or 3rd, Where there is any agreement that is not to be performed within a year from the making thereof. There are other contracts comprised in the same clause, but as they cannot have any relation to collieries they are not referred to now.

It is important to notice the distinction between express and implied contracts. Express contracts are those which are openly uttered or written at the time of the making of them. But there is a large class of contracts which are implied, that is, depend for their terms and their force upon a mere construction of law. The general rule is, that the law will imply that a man actually promises to fulfil that which he ought to fulfil. For example, if A. employs a person to do any work for him, but nothing is said about payment, the law steps in and supplies the want of an express promise by implying that A. will pay the workman so much as his labour deserved. So any person who undertakes to execute any special work, impliedly undertakes to do it in a workmanlike manner ; and he who takes upon himself any office, employment, or

duty, is supposed by the law to undertake that he will perform it with integrity. On the other hand, if a person is employed to perform any work which it is not his ordinary and usual business or art to do, the law implies no such general undertaking, and leaves it to be made the subject of a special arrangement between the parties.

Another general rule relates to the competency of persons to bind themselves by their contracts. Insane and drunken persons, married women, persons under the influence of terror, and persons under age are either not liable at all, or, at most, are only liable on contracts for necessaries suitable to their station in life. Infants are also allowed by law to make contracts which are beneficial to their personal interests, such as contracts of apprenticeship, and of hiring and service. Such a contract would subject an infant to all the legal regulations applicable to masters and servants, although he might plead his infancy, if an action were brought against him upon the contract. But the Legislature has of late years interposed its authority with reference to the hiring and service both of women and children in mines and collieries. The statutes which enact these limitations are the 5 & 6 Vict. cap. xcix., and the 23 & 24 Vict. cap. cli., the provisions of which will be found in another part of this work.

CONTRACTS BY AGENTS.

In speaking of contracts it has been hitherto assumed that they are made between the principal parties themselves ; but a contract of any kind may

be entered into either by the parties in person, or by their agents lawfully authorised. An agent is a person authorised by another to do acts or make engagements for him in his name. The person who so authorises him is called the principal. Generally no particular form is necessary for the appointment of an agent. A mere verbal appointment is sufficient; and even the fact of one person being employed to do any business whatever for another will create between them the relation of principal and agent. But there are some few acts in reference to the granting of leases and the creation of any uncertain interest in land, for which the authority of the agent must be in writing, or by deed.

The authority of an agent may in general be revoked by the principal at any time. It also ceases upon his death or bankruptcy. In mercantile transactions it is a universal rule that, in the absence of other instructions, the principal must be supposed to intend that his agent should follow the common usage of the business in which he is employed. This therefore is the course which it is the agent's duty to pursue. An agent may be either a *general* or a *special* agent. If he is empowered to act generally in the affairs of another, or to act generally in some particular capacity (as, for example, to act generally in the management of a particular colliery), he is a general agent. Such a person will be presumed by the law in favour of the rights of strangers who deal with him to have authority for what he does, provided it falls within the usual limits of the business he has to perform, even though he may be transgressing some private direction

of his employer. But a special agent is strictly limited by the commission he has received, so that a person who deals with him cannot take advantage of his acts if they have exceeded his special authority.

The contract of an agent is the contract of the principal, if it is properly entered into by him by virtue of his commission. The act of the agent gives the principal the same rights and imposes on him the same obligations as if he had done it himself. In the course of business at collieries, it rarely happens that colliers are personally engaged by the proprietor; but a contract entered into by an agent, who is commissioned to act generally in the colliery, or has a special authority to engage workmen, is binding on the proprietor. It must be borne in mind, however, that such contract must always be within what may be called the *apparent* authority of the agent; that is, such as the workman who makes the engagement with the agent might, under the circumstances, reasonably suppose to be within the scope of his commission. Thus if a strange collier, seeking employment in a colliery, is referred to a person who affects to act in such business, and is apparently clothed with authority in the colliery, the engagement made with him will bind the principal. But it is otherwise if the collier accepts an engagement from a mere workman, or labourer, who has no apparent authority to make contracts, or is not specially empowered to do so. But if any act or engagement is done or made by an agent of any kind without sufficient authority, it may always be made good by the subsequent assent of the principal; and then the effect is exactly the same as if full power

had been given in the first instance. The rule of law is that every such ratification has a retrospective effect. Thus if a collier is improperly engaged by a person not fully authorised to do so, and afterwards receives wages at the office, that would in general be such a recognition of his engagement as would make it binding upon the principal.

An agent is not in general personally responsible on any contract entered into by him on behalf of his principal. But in the case of colliers it has been enacted by 4 Geo. IV. xxxiv. sect. 4, that as it frequently happens that masters or employers reside at considerable distances from the places where their business is carried on, or are occasionally absent for long periods of time, and during such residence or absence entrust their business to the management of stewards, agents, &c., whereby colliers and others may be subjected to great difficulties and hardships, and put to great expense in recovering their wages ; in either of these cases it shall be lawful for any justice of the county or place where such collier, &c. shall be employed, upon his complaint touching the non-payment of his wages, to summon the steward, agent, bailiff, foreman, or manager, and to hear and determine the matter of the complaint in like manner as the complaints of the like nature against any master or employer are directed to be heard and determined, and also to make an order for the payment by such steward, agent, &c. to such collier, &c. of so much wages as shall appear to be justly due, provided that the sum in question do not exceed ten pounds. And in case of refusal or non-payment by such steward,

agent, &c. for the space of twenty-one days from the date of such order, such justice shall issue his warrant to levy the same by distress and sale of the goods and chattels *of such master or employer*, rendering the overplus to the owner, or to such steward, &c. for the use of such master, after payment of the charges of such distress and sale. And by the second section of the new Master and Servants Act, the word "employer" is to include the steward, agent, bailiff, foreman, manager, or factor of any person, firm, corporation, or company, who has entered into a contract of service with any servant, workman, &c. But it seems to be intended that agents, &c. should only become parties to proceedings under the new Act, under the circumstances indicated by the previous statute of 4 Geo. IV. (See the next chapter.)

Thus it appears that the agent may be made the defendant in cases of this kind, but he is not made *personally* responsible by the statute above referred to, the only remedy given being one against the goods of the principal.

ON THE CONTRACT OF HIRING.

A collier is a person who agrees to become the servant of another for the purpose of cutting coal or performing some similar service, in consideration of wages. A contract of hiring and service need not be in writing, unless it be for a period longer than a year, or for a year to commence at some future time. If it is reduced to writing it is not liable to any stamp duty, unless it relate to the superior class of clerks, &c., employed in a colliery.

General Hiring.—If nothing is said as to the duration of the engagement and no custom exists relating to this point, the hiring is considered as a general hiring, and in point of law a hiring for a year.* But this rule does not apply where the contract contains conditions or stipulations inconsistent with the notion of hiring for a year, or where (as is generally the case in coal districts), from some general and well-known custom, the parties may be supposed to have made their engagement with mutual reference to such custom.

Contract Book.—To prevent misunderstandings and disputes, it is very expedient that in the office of a colliery a contract-book should be kept, and the terms of it read over to every collier who accepts employment there. He should further be required to sign his name in the book, or affix his mark, if he is satisfied with the conditions proposed.

Form of Contract.—For the convenience of proprietors a form of such a contract is here suggested, which the author conceives will meet the difficulties which magistrates have often felt in dealing with contracts of this nature.

“In consideration that Mr. A. B. will employ me as a collier, &c., from the 1st of _____, 1861, as regularly as the state of the trade, works, and machinery will permit, and pay me wages at _____ per ton, of hand-picked coal by _____ payments, I agree to serve the said Mr. A. B. from the _____ day of _____, 1861, and to obey

* *Fawcett v. Cash*, 5 B. & Ad. 904.

all lawful orders of my said master and his agents, and overmen duly authorised, and to obey and keep all the rules duly established by law for the regulation of this colliery, subject always to a notice of _____ weeks to be given on either side before leaving or being discharged from this colliery, except for lawful cause."

There is good reason to believe that such a consideration as that expressed above would uphold the contract to serve; for the judgment of Lord Campbell in the case of *Ex parte Baily* (which will presently be referred to more particularly), appears to go to this extent.

Unwritten and implied Contracts.—The importance of having a written contract is great, though it is not now a necessary condition of proceeding against a collier under the new Master and Servants Act, for not entering upon the service for which he has contracted. It also puts an end to all uncertainty as to the terms and conditions on either side. But as, unfortunately, this practice is not generally adopted, it is proper to state that if a collier of the district asks for employment at the office, and is simply told that he may go to work in some specified part of the workings, and he goes without further question, it will be considered that he accepts that employment *on the basis of the customs and usages of that district and colliery* as to pay, hours, notice, &c., provided he continues to work and receive pay for such a period as to raise the presumption that he must have acquainted himself with the customs there prevalent, and with the course of business in the particular pit. But in

the case of a new collier, recently brought into the work, to whom no pains have been taken to state the terms of the contract of service, it is not reasonable that such a person should be held liable to all the consequences of a breach of an implied contract as the other older colliers would be. It would rather seem that when a new collier goes to work without any express agreement, he is at first only bound by the general customs which prevail in all the collieries of that country ; and that as to wages, he can only enforce his claim to whatever sum he can prove his work to be worth. After a pay-day has passed over, and he has received wages at a certain rate, and has had a reasonable time to acquaint himself with the course of employment and wages in the colliery, it may fairly be assumed that he has tacitly assented to all the conditions under which the other colliers labour, and has contracted to serve upon those terms. And in all cases where services have been rendered without any express contract to pay for them, it is always a question for the justices or a jury whether the circumstances will warrant them in drawing the inference that there was an implied contract to do so. It need hardly be added, that every collier is bound by the special rules as certified by the Inspector, provided they are duly published according to section 15 of the Act of Parliament.

It must be observed, however, that the writer has no express authority for these propositions. They are submitted by him as his own opinion of transactions of this nature. But when the various consequences of a breach of contract by a collier are con-

sidered, as well as the summary method of recovering wages, it is highly inexpedient that contracts of hiring should be left to be elicited in this uncertain fashion. In all those points on which it is intended to insist, the collier should be expressly told what he is to do and what he is not to do, and it is hoped that the plan of a contract-book, above alluded to, will be generally adopted.

General and Special Rules.—The general and special rules of the colliery certified by the Inspector of Mines should also be kept in large print, and be stuck up in the places required by the Act of Parliament, which will be found in another part of this work.

How the Contract may be terminated.—The contract of service may be put an end to on either side by giving the notice stipulated for, or (in the absence of a stipulation) fixed by the custom of the district. This period generally tallies with the length of the time between the pay-days. In South Wales a month's notice is usually required, and the payment of wages is monthly. In the North of England the author is informed that a fortnight's notice only is required, and the pay is also made fortnightly. The consideration of the rescinding of contracts by colliers, and the discharge of colliers from their service, for various causes, will be reserved until the statutes respecting master and servant are treated of at the end of this chapter.

Stoppage of Work.—Questions sometimes arise as to the liability of masters for the wages of colliers during a period when they cannot work, or, as the term is, when the pit is "laid off work." This will

depend entirely upon the special terms of the contract of hiring. If the contract contains merely an undertaking on the part of the master to pay certain stipulated wages in proportion to the work done, and nothing is expressed as to wages to be paid when the work cannot go on, there is no *implied* obligation on the part of the master to find work. Thus where the defendant, the owner of a colliery, agreed with the plaintiff, a collier, "to hew coals, and do such other work as might be necessary for carrying on the colliery, as he should be required to do, at the prices following: First, the owners agree to pay the plaintiff once a fortnight upon the usual day, the wages by them to be earned at the following rates (specifying the rates and manner of working). Fifth, the said parties hereby hired shall during all the times the pit shall be laid off work continue the servants of the said owners, subject to their orders, and liable to be employed by them at such work as they shall see fit. Sixth, the said hewers shall, when required, except when prevented by sickness, or other unavoidable cause, do a full day's work on every working day, and shall not leave their work until such day's work is performed; and in default thereof each of the said parties shall forfeit 2s. 6d. The pit to commence coal work at such times in the morning as shall be required to suit the trade," &c. It was held by the Court of Queen's Bench that the agreement contained no promise on the part of the defendant to employ the collier at reasonable times for a reasonable number of working days during the term of his hiring, and that no action would lie against the defendant for not doing

so, although the plaintiff was thereby unable to earn wages. It was quite optional with him to set the labourers to work.*

But the case is different where a master by the contract of hiring undertakes for the payment of wages, not in proportion to the work done. It may be optional with him to find work, and he may, if he pleases, discontinue his business. But having promised to pay wages without reference to their being in proportion to work done, he must pay them whether he find work or not. If he does not do so, he will be liable to an action for damages for breach of contract.†

It is obvious that the working of collieries cannot be carried on without occasional interruptions. Accidents of an unavoidable nature, and checks in trade arising from want of shipping, adverse winds, the freezing of canals, and other such circumstances, must sometimes stop the collier's work. Has he any claim upon the proprietor of the colliery during such periods of idleness? The author thinks not. The contract is entered into on both sides with a perfect knowledge of this liability to stoppages, and it would probably be considered by courts of law that the engagement was based upon this knowledge and understanding. It would, however, tend to prevent disputes, if this point were always clearly expressed in a contract-book to be signed by the colliers before entering upon their work. The form on page

* *Williamson v. Taylor*, 5 Q. B. 175.

† *Aspdin v. Austin*, 5 Q. B. 671.

151 provides against contingencies of this kind, and binds the collier to take his chance of temporary stoppages, subject to his right to give notice of his intention to leave. But even when the contract is not expressed either verbally or in writing, and is only inferred from usage (as is unfortunately but too often the case), these contingencies must be assumed to have been in the contemplation of the parties to it. Any collier who has once been stopped working from any such cause, and has resumed work without complaint, must, of course, be considered to have waived any right to complain, if he had any such. A new collier hired upon an implied contract, and ignorant of local circumstances, might, doubtless, raise the question by suing for damages for loss of time and wages, if he had not compromised his chance of success by a waiver. It might be contended that the contract was bad for want of mutuality.

Mutuality.—Stoppages of this kind do frequently occur in those collieries dependent upon water-carriage, which is liable to be checked by adverse winds, want of vessels, cessation of demand, and frost. The case of colliers thus employed is different from that of those whose labour supplies iron-works, or any other regular home demand. The risk in the former work is accompanied by a higher rate of wages, and the certainty in the latter by a lower rate. It has been contended that the contract of the first-mentioned, or sea-coal colliers, is void for want of mutuality, on the ground that it falls under the rule laid down in the case of *Williamson v. Taylor*, quoted above. In that case Lord Denman said, “I do not

find anything in the terms of the agreement to make it imperative on the master to keep the pit at work at any given time, or to find employment all the year round."

Undoubtedly, if the collier cannot show a contract which entitled him to have full employment whenever it was to be had, but is to be left at the caprice and mercy of his master, there will be no binding agreement, for there would be no mutuality. Thus in the case of *R. v. Lord* (17 Law Journ. M.C. 131), there had been a conviction of a servant for unlawfully absenting himself from his master's employment. The contract was to serve for twelve months at certain weekly wages, and to serve the said master at all times, and to work fifty-eight hours per week, with a proviso that in case the steam-engine should be stopped from accident or other cause, then the master might *retain* all the wages of the servant during that time. Lord Denman said, "Among many objections, one appears to be fatal. The servant was an infant at the time of entering into the agreement which authorises the master to stop his wages when the engine is stopped from working from any cause. An agreement to serve for wages may be for the benefit of the infant, but an agreement which compels him to serve at all times during the term, but leaves the master free to stop his work and wages whenever he chooses, cannot be considered beneficial to the servant. It is inequitable and wholly void." But this case was that of an infant, and it does not clearly appear how far the Court decided on the special ground of the infancy. At any rate this case differs from the ordinary con-

tract of the sea-coal collier. There is indeed an element of uncertainty in the latter, but that does not arise from the master's caprice, but from circumstances over which he has no control. The contract may be merely an implied one, no written or verbal agreement having been made, but it certainly gives to the collier a claim to employment when employment is to be had. He knows well that this uncertainty exists, and he contracts with reference to it. Casual but highly-paid work suits some men better than certain employment at a lower rate. It is perhaps best to avoid all difficulty by undertaking to give some small remuneration, as a retaining fee, to the collier for each day he is involuntarily without work. At all events it is expedient to adopt a written contract containing a clause like that in the form above given, in which this uncertain quality of employment shall be stated. But in the absence of such remuneration and written contract it is believed that the implied contract would be upheld by the courts of law, as being founded upon a sufficient consideration to make them legal and effectual.

The recent case of *Ex parte* Baily (23 Law Journ. M.C. 161) confirms this opinion. In that case Baily had been committed to prison for misconduct as a servant. It appeared that he contracted to serve Messrs. Marshall as a collier for one month, and so on from month to month, determinable on a month's notice, and for the wages of 1s. 10d. per ton for cutting coal, that he entered into the service, and afterwards unlawfully absented himself, without lawful excuse. A writ of Habeas Corpus had been issued to bring the

prisoner before the Court of Queen's Bench, and affidavits were held to be admissible to show that the justices had no evidence before them from which they could legally infer a contract creating the relation of master and servant, thus negativing jurisdiction. The affidavits were defective, but it was assumed for the purposes of the decision that Baily was employed under a contract to serve until a month's notice should be given by either party ; that the price should be 1s. 10d. per ton of coal cut, and should rise and fall with the price in other collieries in the district, but that the price was not to affect the month's notice ; that he should serve the employer exclusively and not work for any other person during the said service ; that if trade was slack, or the works stopped by accident, the employer was to provide him with work, or pay him reasonable wages ; and it was assumed that the evidence on the part of Baily was that he was not bound to any hours of working, nor to cut any quantity of coal ; that the employment in the colliery depended on the demand for coal, and that there was not always full employment, and that no allowance was made for loss of time when trade was slack, or the works stopped by accident.

It was contended that there was no obligation on the part of this collier to serve personally, and that he was at liberty to do as much or little work as he pleased ; and that the employers were not bound to find work for the colliers, and that consequently there was no valid consideration for the contract to serve. But Lord Campbell remarked upon this, " It may be that the employers were not bound to keep open their

colliery, but *could they have excluded their men*, and taken in others to work while their colliery was open? If not, then there is ample consideration for a contract by the prisoner, which he broke by striking for wages." And again, "I think there is sufficient evidence of a contract to serve for a month. It is said there is no consideration. But there was an obligation on the masters to employ and to pay the men, not, indeed, day by day, but *an obligation to continue the relation* of master and servant, until the contract was determined in the manner prescribed, and *that is a sufficient consideration for the contract to serve on the part of the men*. Then it is said there was no engagement to serve personally; but I think the justices might reasonably infer that there was to be a personal service, and if so, by refusing to work they broke their contract. Therefore I think there was evidence upon which they might have arrived at the conclusion stated in the warrant, and that being so, we cannot review their decision."

CHAP. X.

DISPUTES BETWEEN MASTERS AND COLLIERs.

THE law relating to disputes between employers and employed having been materially altered in the last session of Parliament, it will be convenient to collect the old and new provisions into one chapter.

The ordinary legal remedies in cases of breach of contract or alleged wrongs done as between masters and colliers, and several other classes of workmen, have been supplemented by a peculiar and summary jurisdiction conferred on any justice of the peace of the county or city, &c, where the master shall inhabit, by a series of statutes.

By the 20 Geo. II. cap. 19. it is enacted that all complaints, differences, and disputes which shall arise between masters and colliers, &c. &c., and other labourers employed for any certain time or in any other manner, shall be heard and determined by any one or more justice or justices of the peace of the county, city, town corporate, &c., where such master shall inhabit, which said justice is empowered to examine upon oath any such collier, &c., touching any such complaint, difference, or dispute, and to make such order for payment of so much wages to

such collier, &c., as to such justice shall seem just and reasonable, provided that the sum in question do not exceed £5, and in case of refusal or non-payment of any sums so ordered by the space of one-and-twenty days next after such determination, such justice shall and may issue his warrant to levy the same by distress and sale of the goods and chattels of such master or person employing such collier.

But by sect. 5 of the statute passed in the 4th Geo. IV. c. 34. every justice before whom any such complaint is made, in pursuance of the stat. 20 Geo. II. c. 19. may order the amount of wages that appear to be due to any servant to be paid within such period as the justice shall think proper, and to enforce it by distress and sale, &c.

These enactments are not repealed or altered by the new Master and Servants Act, and not only may, but very generally are, acted upon as the proper machinery for the recovery of wages. The new Act does not seem to make any special provision for the recovery of wages. They must be recovered in the same way as before the passing of the new statute, either before a magistrate or in the County Court. The new Act appears to be intended primarily to apply to wrongful acts on either side arising out of contracts, such as absence from, or refusal to enter upon, employments, &c., within the earlier statutes, on the part of the servant, and ill-treatment, &c. on the part of the master, and to other wrongful acts on either side, for which provisions were made by earlier Acts, but which were considered objectionable on the ground of harshness and want of mutuality. If

the Act had been meant to apply to wages it would have been easy to introduce that particular word, as in 20 Geo. II. cap. 19. The expression, however, is omitted.

The 9th section contains no power to adjudicate for the payment of wages under that name. If the workman sues for wages under the new Act he can only do so in the form of a claim for compensation or damages for a breach of contract. It will, doubtless, be found most convenient to proceed under the section above quoted from the 20 Geo. II. cap. 19.

The following enactments are now rarely, if ever, brought into practice, but as they refer specially to colliers, it is proper to print them in this work.

By 39 & 40 Geo. III. cap. 77. sect. 3, after reciting that it often happens that colliers and miners, disregarding their agreement, wilfully and obstinately work coal and iron-stone in a different manner to what they stipulated, or otherwise abandoned the agreement they have entered into, to the great and lasting prejudice of their employers, it is enacted that if any person or persons making any bargain, or entering into any contract or agreement in writing, for raising or getting any coal, culm, iron-stone, or iron ore, shall wilfully, and to the prejudice of the owner, raise, get, or work, or cause to be raised, got, or worked, any such coal, culm, iron-stone, or iron ore, in a different manner to his or their stipulations in respect thereto, and contrary to the directions, or against the will of the owner or his agent, or agents, having the care thereof, or shall desist or refuse to fulfil the engagements they have entered into,

every person or persons so offending, and being thereof convicted, before one or more of His Majesty's justices of the peace for the county wherein such offence shall have been committed, shall, for every such offence, on complaint of the owner or owners, or his or their agent or agents, and not otherwise, forfeit and pay any sum of money not exceeding forty shillings ; and upon non-payment thereof such justice or justices shall commit the offender or offenders to the common gaol of the county or place where the offence shall be committed, for any time not exceeding six months, or until the penalty and charges shall be paid ; and upon such conviction every such bargain, contract, or agreement shall become void.

And whereas the owners and lessees of coal, iron-stone, or iron ore, contracting to get the same raised by weight, are often under the necessity of advancing money to the colliers and miners upon the measure thereof in heaps, at or near the colliery or mine work, before the same can be carried to be weighed, and great frauds are practised in the walling and stacking such coal, iron-stone, and iron ore, by which the colliers and miners obtain money beyond what they earn or are able to repay, and miners often defraud each other by conveying away iron-stone from one heap into another ; it is therefore enacted, that if any person or persons shall wall or stack, or cause to be walled or stacked, any coal, iron-stone, or iron ore in any false or fraudulent manner, with intent to deceive his or their employer or employers, or if any person or persons shall take and

remove any iron-stone or iron ore, with intent to defraud the person or persons who shall have raised the same, and shall be thereof convicted before any one or more justice or justices of the peace for the county wherein such offence shall have been committed, it shall and may be lawful for such justice or justices to commit any such person to the house of correction or common gaol for the same county for any time not exceeding three months.

Having thus quoted so much of the old statutes as will be found useful and available at the present time, we come to the new Act, which may fairly be designated as the Master and Servants' code. It is inserted in this place *verbatim*, and the leading cases upon disputes between employers and employed will be added at the end, together with some observations upon the alterations effected by the new Act.

30 & 31 VICT. CAP. CXLI.

AN ACT to amend the Statute Law as between
Master and Servant.

Whereas it is expedient to alter in some respects the existing enactments relative to the determination of questions arising between employers and employed under contracts of service:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title. 1. This Act may be cited for all purposes as "The Master and Servant Act, 1867."

2. In this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be anything in the subject or context repugnant to such construction:

The word "employer" shall include any person, firm, corporation, or company who has entered into a contract of service with any servant, workman, artificer, labourer, apprentice, or other person, and the steward, agent, bailiff, foreman, manager, or factor of such person, firm, corporation, or company:

The word "employed" shall include any servant, workman, artificer, labourer, apprentice, or other person, whether under the age of twenty-one years or above that age, who has entered into a contract of service with any employer:

The words "contract of service" shall include any contract, whether in writing or by parol, to serve for any period of time, or to execute any work, and any indenture or contract of apprenticeship, whether such contract or indenture has been or is made or executed before or after the passing of this Act:

The word "parties" shall include the employer and employed under any contract of service:

The word "writing" shall include "printing:"

The word "property" shall include all real and personal estate and effects used and employed under or affected by any contract of service or operations under the same:

The word "sheriff" applies to Scotland only, and shall include sheriff substitute:

The words "county or place" shall include county, riding, division, liberty, city, borough, or place: The word "magistrate" does not apply to Scotland, and means in England, except in the city of London, a stipendiary magistrate, and in the city of London means the Lord Mayor, or an alderman sitting at the Mansion House or at the Guildhall, and in Ireland shall apply only to the metropolitan police district of Dublin, and there shall mean one of the divisional magistrates for such district:

The word "justice" means justice of the peace: The words "two justices" mean two or more justices assembled and acting together:

The words "justice," "two justices," "magistrate," and "sheriff" respectively mean a justice, two justices, a magistrate, and a sheriff having jurisdiction in the county or place where any contract of service is according to the terms thereof to be executed, or where the party against whom any information, complaint, or proceeding is to be laid or taken under this Act happens to be.

3. Nothing in this Act shall apply to any contract of service other than a contract within the meaning of the enactments described in the first schedule to this Act, or some or one of them, or to any employer or employed other than the parties to a contract of service to which this Act applies as aforesaid, or to any case, matter, or thing arising under or relating to any contract of service, or arising between employer and employed, other than cases, matters, and things to which the said enactments respectively apply; and

Limitation
of scope of
this Act,
and substi-
tution
thereof for
existing
enactments.

in respect of all contracts of service, employers, employed, cases, matters, and things to which this Act applies, the respective provisions of this Act shall be deemed to be and are hereby substituted for such of the said enactments, or so much or such parts of the same, as would have applied thereto if this Act had not been passed ; but any proceedings at the passing of this Act pending under the said enactments, or any of them, may be continued and prosecuted as if this Act had not been passed.

4. Wherever the employer or employed shall neglect or refuse to fulfil any contract of service, or the employed shall neglect or refuse to enter or commence his service according to the contract, or shall absent himself from his service, or wherever any question, difference, or dispute shall arise as to the rights or liabilities of either of the parties, or touching any misusage, misdemeanor, misconduct, ill-treatment, or injury to the person or property of either of the parties under any contract of service, the party feeling aggrieved may lay an information or complaint in writing before a justice, magistrate, or sheriff, setting forth the grounds of complaint, and the amount of compensation, damage, or other remedy claimed for the breach or non-performance of such contract, or for any such misusage, misdemeanor, misconduct, ill-treatment, or injury to the person or property of the party so complaining ; and upon such information or complaint being laid, the justice, magistrate, or sheriff shall issue or cause to be issued a summons or citation to the party so complained against, setting out the grounds of complaint, and the amount claimed for

Complaint to be made before a justice or magistrate in England, Wales, and Ireland, and before a justice or sheriff in Scotland.

Upon complaint made, summons or citation to be issued.

compensation, damage, or other remedy, as set forth in the said information or complaint, and requiring such party to appear, at the time and place therein appointed, before two justices or before a magistrate, or before the sheriff, to answer the matter of the information or complaint, so that the same may be then and there heard and determined.

Time for appearance.

5. The time to be appointed in the summons or citation for the appearance of the party complained against shall not be less than two or more than eight days from the date of the summons or citation, save that where the appearance is to be before justices in petty sessions, or before a magistrate at a police court, the time to be appointed shall be that of the sitting of the court of petty sessions or police court at or for the place where the summons or citation is returnable, to be held next after such two days (whether within such eight days or not).

Mode and time of service.

6. Every such summons or citation shall be served on the party complained against by being delivered to him or left at his usual place of abode or business not less than two days before the time appointed for his appearance.

On neglect or refusal to obey summons or citation, warrant to issue.

7. Wherever the party complained against shall neglect or refuse to appear to any summons or citation as aforesaid according to the provisions of this Act, a justice, magistrate, or sheriff may, after due proof on oath of the service of such summons or citation, issue a warrant for the apprehension of such party in order to the hearing and determining of the matter of the information or complaint.

8. If at any time after the laying of the information or complaint it appears to a justice, magistrate, or sheriff that the party complained against is about to abscond, the justice, magistrate, or sheriff may issue a summons or citation requiring the party complained against to appear before a justice, magistrate, or sheriff at a time and place therein appointed (such time being not later than twenty-four hours, exclusive of Sunday, from the date of the last-mentioned summons or citation), and to find good and sufficient security by recognizance or bond, with or without sureties, to the satisfaction of a justice, magistrate, or sheriff, for his appearance to answer the information or complaint; and if the party complained against fails to appear at the time and place so appointed, a justice, magistrate, or sheriff may issue a warrant for his apprehension; and if such party on appearing to the last-mentioned summons or citation, or on being so apprehended, fails so to find security, a justice, magistrate, or sheriff may order him to be detained in safe custody until the hearing of the information or complaint; but on his so finding security he shall be set at liberty.

9. Upon the hearing of any information or complaint under the provisions of this Act two justices, or the magistrate or sheriff, after due examination, and upon the proof and establishment of the matter of such information or complaint, by an order in writing under their respective hands, in their or his discretion, as the justice of the case requires, either shall make an abatement of the whole or part of any wages then

In case of
intention to
abscond se-
curity to be
found for
appearance.

Compensa-
tion may be
awarded
under order
of two jus-
tices, &c. for
breach or
nonper-
formance of
contract of
service, or
other order
may be
made.

already due to the employed, or else shall direct the fulfilment of the contract of service, with a direction to the party complained against to find forthwith good and sufficient security, by recognizance or bond, with or without sureties, to the satisfaction of a justice, magistrate, or sheriff, for the fulfilment of such contract, or else shall annul the contract, discharging the parties from the same, and apportioning the amount of wages due up to the completed period of such contract, or else where no amount of compensation or damage can be assessed, or where pecuniary compensation will not in the opinion of the justices, magistrate, or sheriff meet the circumstances of the case, shall impose a fine upon the party complained against, not exceeding in amount the sum of twenty pounds, or else shall assess and determine the amount of compensation or damage, together with the costs, to be made to the party complaining, inclusive of the amount of any wages abated, and direct the same to be paid accordingly ; and if the order shall direct the fulfilment of the contract, and direct the party complained against to find good and sufficient security as aforesaid, and the party complained against neglect or refuse to comply with such order, a justice, magistrate, or sheriff may, if he shall think fit, by warrant under his hand, commit such party to the common gaol or house of correction within his jurisdiction, there to be confined and kept until he shall so find security, but nevertheless so that the term of imprisonment, whether under one or several successive committals, shall not exceed in the whole the period of three months: provided always, that the two justices,

magistrate, or sheriff may, if they or he think fit, assess and determine the amount of compensation or damage to be paid to the party complaining, and direct the same to be paid, whether the contract is ordered by them or him to be annulled or not, or, in addition to the annulling of the contract of service and discharge of the parties from the same, may, if they or he think fit, impose the fine as herein-before authorized, but they or he shall not under the powers of this Act be authorized to annul, nor shall any provisions of this Act have the effect of annulling, any indenture or contract of apprenticeship that they or he might not have annulled or that would not have been annulled if this Act had not been passed.

10. Where it is alleged by any party to a contract of service that the condition of a recognizance or bond entered into or given for the fulfilment of the contract under the provisions of this Act has not been performed, two justices, or a magistrate or sheriff, being satisfied thereof, after hearing the parties and the sureties (if any), or in the absence of any party or surety not appearing after summons or citation in that behalf may order that the recognizance or bond be enforced for the whole or part of the sum thereby secured, as to the justices, magistrate, or sheriff seems fit; and the sum for which the same is so ordered to be enforced shall be recoverable accordingly in a summary manner under the Acts described in the second schedule to this Act.

11. Where on the hearing of an information or complaint under this Act an order is made for the payment of money, and the same is not paid as

Enforce-
ment of re
cognizance
or bond for
fulfilment
of contract.

Recovery of
money by
distress or
poinding,
and im-
prisonment
in def-

directed, the same shall be recovered by distress or poinding of the goods and chattels of the party failing to pay, and in default thereof by imprisonment of such party according and subject to the Acts described in the second schedule to this Act; but no such imprisonment shall be for more than three months, or be with hard labour.

Imprison-
ment to be
in discharge
of compen-
sation.

12. From and after the expiration of the term of any such imprisonment as aforesaid, the amount of fine, compensation, or damages, together with the costs, so assessed and directed to be paid by any such order as aforesaid, shall be deemed and considered as liquidated and discharged, and such order shall be annulled accordingly, and the said parties exonerated from their respective obligations under the same: provided always, that no wages or any portion thereof which may be accruing due to the employed under any contract of service after the date of such order shall be assessed to the amount of compensation or damages and costs directed to be paid by him under any such order or warrant of distress or poinding, or be seizable or arrestable under the same.

Wages
exempt from
order,
distraint,
poinding, or
arrestment.

Application
of fines and
money
recovered.

13. Where justices, or a magistrate or sheriff, impose any fine or enforce any sum secured by a recognizance or bond under this Act, they or he may, if they or he think fit, direct that a part, not exceeding one half, of such fine or sum, when recovered, be applied to compensate an employer or employed for any wrong or damage sustained by him by reason of the act or thing in respect of which the fine was imposed, or by reason of the non-fulfilment of the contract of service.

14. Where on the hearing of an information or complaint under this Act it appears to the justices, magistrate, or sheriff that any injury inflicted on the person or property of the party complaining, or the misconduct, misdemeanor, or ill-treatment complained of, has been of an aggravated character, and that such injury, misconduct, misdemeanor, or ill-treatment has not arisen or been committed in the *bonâ fide* exercise of a legal right existing, or *bonâ fide* and reasonably supposed to exist, and further, that any pecuniary compensation or other remedy by this Act provided will not meet the circumstances of the case, then the justices, magistrate, or sheriff may, by warrant, commit the party complained against to the common gaol or house of correction within their or his jurisdiction, there to be (in the discretion of the justices, magistrate, or sheriff,) imprisoned, with or without hard labour, for any term not exceeding three months.

15. Any party convicted by two justices or the magistrate under the provisions of the last preceding section may appeal against the conviction upon finding good and sufficient security, by recognizance or bond, with or without sureties, to the satisfaction of a justice or magistrate, to prosecute the said appeal at the next general court of quarter sessions of the peace to be holden in and for the county or place wherein such conviction shall have been made, and to abide the result of the said appeal according to the usual procedure of such court, and to pay such costs as that court may direct, which costs that court is hereby empowered to award.

Punishment
for aggra-
vated mis-
conduct, &c.

Party con-
victed may
appeal to
the next
general
quarter
sessions of
the peace.

Parties to
the contract
of service to
be compe-
tent wit-
nesses.

16. Upon the hearing and determining of any information or complaint between employer and employed, and on any appeal, under the provisions of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses for all the purposes of this Act.

Wages not
to be pay-
able during
imprison-
ment.

17. No wages shall become payable to or recoverable by any party for or during the term of his imprisonment under any warrant of committal under this Act.

Nothing to
prevent pro-
ceedings by
civil action
or suit.

18. Nothing in this Act shall prevent employer or employed from enforcing their respective civil rights and remedies for any breach or nonperformance of the contract of service by any action or suit in the ordinary courts of law or equity in any case where proceedings are not instituted under this Act; nor shall anything in this Act affect the provisions of the Act of

5 G. 4. c. 96.

the fifth year of King George the Fourth (chapter ninety-six), "to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen," or of any Act extending or amending the same.

Saving for
indictments,
&c.

19. Nothing in this Act shall interfere with the usual and accustomed mode of procedure in any court of criminal judicature for the trial of indictable offences relating to wilful and malicious injuries to persons or property committed by masters, workmen, servants, or others, either at common law or under the several statutes made and now in force for the punishment of such offences, but so that no person be twice prosecuted for the same offence.

No objec-
tion to be
taken for

20. The several forms in the third Schedule to this Act contained, or forms to the like effect, shall be

deemed valid and sufficient in law, and no objection ^{defect in forms.} shall be taken or allowed for any alleged defect therein, either in substance or in form, and in Scotland any complaint under the provisions of this Act, if brought before the sheriff, may be in the form of a summary petition, and followed by the usual forms of procedure applicable to summary petitions in the Sheriff Court ; and the forms set forth in the third Schedule (Part 2. —Scotland) to this Act annexed, or forms to the like effect, may be used, and shall be sufficient for the purposes thereof.

21. The enactments described in the second Schedule ^{Application of summary procedure Acts.} to this Act, and all enactments extending or amending the same, shall apply and be put in force to and in respect of proceedings under this Act, except as far as any provision of this Act is inconsistent therewith.

22. Except as in this Act expressly otherwise provided, every order or determination of a justice, ^{Orders under Act final.} justices, a magistrate, or a sheriff, shall be final and conclusive, notwithstanding anything in any of the enactments described in the first Schedule to this Act.

23. No writ of certiorari or other process shall issue to remove any proceedings under this Act ^{on certiorari.} into any superior court.

24. Nothing in this Act shall take away or abridge ^{Saving for special jurisdictions.} any local or special jurisdiction touching apprentices.

25. Nothing in this Act shall extend or make applicable to or in Ireland, or to or in any part of Great Britain, any of the enactments described in the first Schedule to this Act not in force there independently of this Act. ^{Provision as to Ireland, &c.}

Duration
of Act.

26. This Act shall continue in force until the expiration of one year after the passing thereof, and to the end of the then next session of parliament, and no longer.

It seems unnecessary to insert here the schedules and forms appended to the Act, but they will be found at every Police Court.

Such being the provisions of the old statute under which a collier may still sue for wages by that name, and of the new statute which empowers both employer and employed to seek and obtain redress for injuries connected with their peculiar contract, it is necessary to add some comments upon their relative rights and liabilities. In the first place, it should be kept in mind that the subject matters to be dealt with are not enlarged by the new statute, nor the parties that may avail themselves of its provisions. The principal change is that the procedure is altered, and the adjudicating powers of the tribunal are modified.

But though the Act creates no new jurisdiction so far as relates to the cases or parties within its operation, it does create in Scotland a new tribunal, and in England it abolishes the former powers of a single justice of the peace. Unfortunately the legislature chose to limit the scope of the Act to such contracts of service as are within the meaning of the enactments described in the first schedule, and to cases, matters, or things to which those enactments apply. "It is a subject of regret," says a learned writer,* "that instead of defining the cases to which

* "Master and Servant Act," J. E. Davis, Esq.

the Act should apply, they can only be ascertained by a close examination of the seventeen statutes mentioned in the schedule."

Relation of Master and Servant.—In cases where proceedings are taken under the above statutes, it is essential to the jurisdiction of the justice or justices that it should clearly appear that the relation of master and servant has been created between the parties. For instance, it has been held that a magistrate has no jurisdiction over a contract to weave certain pieces of silk goods at certain prices agreed upon; or a contract to make and complete a road of certain dimensions according to a specification for a certain sum. These contracts do not create the relation of master and servant. The workman has the control of his own time and place and manner of performing his undertaking. It is otherwise with respect to the ordinary miner or collier. He differs, it is true, from the ordinary servant, in being generally paid by the ton and not by the day or week. But he also differs from the ordinary contractor, in being subject to the rules and customs of the colliery as to time, periods of payment, and many other particulars. Thus in the case *Ex parte Baily*, 23 Law Journ. M.C. 161, evidence of a contract to serve as a collier until a month's notice on either side, the price to be 1s. 10d. per ton of coals cut, paid monthly, but varying with the price in the district, and the collier agreeing not to work for any other person during the service, nor until the expiration of the month's notice, was held sufficient to warrant the inference of a contract for personal service within the old statute. But

on the other hand, in the case of *Lancaster v. Greaves*. (9 B. & C. 623), a man contracted to build a wall for a certain price, in a certain time, according to a written specification, and refused to complete the work. The Court of King's Bench held that the relationship of master and servant was not established. And in another case it was said that there is a plain distinction between becoming the servant of an individual and contracting to do specific work. The same person may contract to do work for many others, but cannot with propriety be said to *serve* each of them. In order to give the justices jurisdiction to hear a complaint as to the non-payment of wages under the 20 Geo. II. cap. 19, it is only necessary that the relation of master and servant should exist between the parties ; and the contract of service need not be *for any specific time*. (*Taylor v. Carr*, 31 Law Journ. M.C. 111.)

At one time considerable doubt was entertained in South Wales whether colliers paid at a certain rate per ton of coals carried, who were engaged with the understanding that a month's notice should be given on either side before terminating the engagement, were within the statutes which refer to master and servant. A very clear case, stating the circumstances and usages very fully, was some years ago laid before Sir Fitzroy Kelly, whose opinion was as follows :—" If the contract between the master and workmen be a contract to serve from month to month, and it cannot be put an end to without a month's notice, the case is within the statute, and the magistrates have jurisdiction. Such a contract may either be the subject of

direct proof, as by matter in writing, or it may be inferred from usage between the parties, as by the payment of wages having always been made monthly, or from any notice that the engagement is a monthly engagement being affixed in any public place upon the works, or in any other way brought within the knowledge of the workman. And it clearly makes no manner of difference that the nature of this work is the cutting of coal, or that the mode of payment is so much 'per ton, and not so much per week or month."

This opinion and the cases above quoted will, perhaps, suffice to indicate the principle of *service* which must always lie at the root of the summary jurisdiction of magistrates under these enactments.

As to the *Rights and Duties of the Master and the Collier*, it is the duty of every employer who has by himself or his agent engaged a collier, to receive him into his service ; and if he refuse to do so without sufficient grounds, the collier may maintain an action against him for damages for that breach of contract, or may proceed under the Master and Servants Act. It is also the duty of the master to retain the collier for whatever time he has contracted for, and if he dismiss him before the expiration of that time without lawful reason, the collier may obtain redress as above stated. On the other side it is the duty of the collier to serve his employer honestly and faithfully, to conform to the special rules, and to obey all lawful and reasonable commands within the range of the employment contracted for.

Bonâ fide Disputes.—It is important to bear in

mind that the old Acts did not apply to *bonâ fide* disputes. They were *penal* Acts, and when the decision was against the servant he was criminally convicted. But the new Act appears to apply to cases where the party acts without legal right, but in perfect good faith. The new jurisdiction seems to extend to disputes where employer and employed have acted *bonâ fide* and in the assertion of supposed rights, as well as to cases of wilful breach. Servants are now placed in the same position as masters were formerly. They might under the old Acts get a justice's order for wages, though the master may have refused payment in the honest belief that he had a right to do so, while the master could get no relief from the magistrates unless the absence was wilful, and not under an honest belief of a right. This is now remedied. But the justices ought not to impose a *fine* when the defendant has acted *bonâ fide*.*

If either party be guilty of such misconduct towards the other as to amount to a breach of the contract of hiring and service, the other is at liberty to rescind or put an end to it. This doctrine is clearly stated by Mr. Justice Blackburn in the case of *Unwin v. Clarke* (4 Cox's M. C. p. 132), and is as follows:—"All the cases upon the subject show that where there is a breach of contract, accompanied by the intention of not proceeding under it, one of the parties may elect whether to treat it as a breach or repudiate the contract ; but this is at the option of the party who is not the

* See Davis's "Master and Servant Act," p. 49.

"wrong-doer." But it seems he must put an end to it within a reasonable time after the misconduct, and not waive his right to do so by any delay. As to what will amount to sufficient misconduct to justify such a course, no general and certain rule can be laid down. All servants (of whom we assume colliers to be one class), impliedly, if not expressly, contract to obey all the lawful and reasonable orders of their master, *within the scope of the services agreed for*. Habitual neglect or express refusal to obey such orders, or unlawful absence from work, whenever the rules as to attendance are clear and never waived without express leave, would, no doubt, justify a master in discharging a collier without the stipulated notice, although slight irregularities might not warrant such dismissal. Wilful acts involving danger to his fellow-workmen, or to the colliery, and forbidden by the established rules, would also, it is submitted, justify the master in rescinding the contract with a collier guilty of them. On the other hand, it would probably be held that wilful neglect on the part of the employer to provide for the safety of his colliers would justify the latter in rescinding the contract. For example, if the ventilation of the pit were so neglected that the air became unwholesome and dangerous to health, or if the machinery at the pit's mouth were allowed to fall into such disrepair that the apprehension of danger to life were well founded, it is submitted that the collier might legally refuse to work.

Neglect to pay.—So, if at the regular pay-day the master neglects or refuses upon application to pay the collier his wages actually earned and confessedly due,

the latter would probably be justified in rescinding the contract and ceasing to work. He gives his labour in consideration of cash payments at certain known intervals. The master has no right to turn the collier into a creditor, and at the same time hold him to all the consequences and liabilities of his contract. Nor can he expect that the collier, who lives upon his earnings, should obtain credit with his tradesmen in order to maintain himself whilst his earned wages remain unpaid. But if the collier has previously waived irregularities in payment, or if he works at all after non-payment on a particular pay-day, he cannot rescind the contract until another pay-day, and another act of neglect or refusal to pay him has taken place.

The custom which enables a master to discharge a domestic servant at any time on payment of a month's wages in lieu of a month's notice, does not extend beyond that class of servants.

Wrongful Dismissal.—A collier, or other servant of the same class, who is wrongly dismissed, may proceed under the Master and Servants Act, or sue in the county court. Assuming that his dismissal is unjust, he has the choice of two courses. He may treat the contract of hiring and service as still alive and continuing, and seek compensation for the breach of it, though no wages were due to him at time of the wrongful discharge ; and if wages were then due, he may also recover them under the 20 Geo. II. cap. 19, or by action. Secondly, he may *rescind the contract*. The master having by the discharge refused to perform his part of the contract, the servant has a right to annul or rescind it, and to sue upon what is called

a *quantum meruit* for the actual value of the services rendered down to the time of the discharge. In that case the amount recovered would generally be the proper proportion of wages earned.

Effect of Misconduct on the Claim of Wages.—If the discharge of such servant be in consequence of his own misconduct and breach of duty under the contract, he will not be entitled to any wages not actually due and payable before the dismissal. His loyal and faithful service is a condition precedent to his title to them, and that condition has not been fulfilled. And when notice is given, the collier is bound to remain in his employer's service until the expiration of such notice. A desertion from the service prior to such expiration will be followed by a forfeiture of all wages not actually due, but current at the time of desertion. It has been contended that this rule only applies to cases of service where the wages are not regulated by the amount of work done (as in the case of colliers), but are computed according to time, as when the hiring is for a year or a month, at yearly or monthly wages. But the judge of the county court of Glamorganshire has justly remarked that there is nothing inconsistent with a contract for piece-work that the workman should engage to serve his employer for a given time, or for an indefinite time, subject to a month's notice. And if it were made an essential part of the contract that the collier should serve for the stipulated time, then the continuance in the service for that time appears to be a condition precedent to the right to recover the wages, just as much where the wages are computed by the ton or piece as

where they are computed by the year or month. And this view seems to be sanctioned by *Pilkington v. Scott*, 15 Meeson & Welsby, 657. And further, as the continuing to serve for the appointed time may be contracted for in express terms, and so be made a condition precedent to the recovery of wages, so it may be *implied* from the fact of the contract being only determinable by a month's notice that the collier must continue to offer himself for work, and that the master should continue to find him work to the best of his ability, and according to custom, until the expiration of a notice. A collier cannot refuse to perform his side of the agreement, and at the same time seek compensation for non-performance on the other. If he abandons the special contract he retains no right to sue upon it, nor can he take advantage of his own wrong, and treating the contract as rescinded, sue upon the *quantum meruit*.* In fact, the payment of wages by the ton is merely a mode of reckoning, the amount not becoming due and payable until the arrival of the customary "pay."

Redress for Injuries under the Master and Servants Act.—Under the former Acts the collier had an advantage over his employer ; that is, he could obtain orders for payment of whatever might be due to him, though the master might have refused payment honestly believing he had a right to do so ; whereas the master had no remedy against the collier unless the act complained of was a wilful and guilty act. If the collier acted *bonâ fide* under a fair and reasonable

* Judgment of Judge Falconer.

belief that he had performed his contract, he could not be convicted. Under the new Act masters and servants are placed in the same position. Each party to a contract of hiring may now seek compensation, damage, or other remedy for the breach alleged, or for any misusage, misdemeanor, misconduct, ill-treatment, or injury to the person or property of the complainant, provided that it be a case, matter, or thing within the scope of the Acts mentioned in the schedule. Then the justices, upon due proof of the matter, may abate wages due, or direct a fulfilment of the contract, with security by recognizance or bond, and with or without sureties ; or may annul the contract and apportion the wages due ; or, under certain circumstances, may impose a fine ; or assess compensation or damages ; or may order compensation *and* annul the contract ; and lastly, may impose a fine *and* annul the contract.

In addition to these modes of dealing with complaints, cases of an *aggravated* kind may be punished by imprisonment not exceeding three months (sect. 14).

The employer and the workman are now placed on equal terms before the law, and both parties may be examined on oath with reference to their differences ; and their husbands or wives are also made competent witnesses.

Bankruptcy of the Master.—In case of the bankruptcy of the master, it is enacted by 12 & 13 Vict. c. vi. s. 169, that when any bankrupt is indebted at the time of issuing the fiat or filing the petition to any labourer or workman, the court, upon proof, may order so much as shall be so due, not exceeding 40s.,

to be paid to such labourer or workman out of the estate, and such labourer or workman may prove for any sum exceeding such amount.

Medical Attendance.—A master is not bound to provide medical advice and attendance for his servants. But though this is the general rule, it is generally made a matter of special arrangement between masters and colliers in the principal works. It has been decided that stoppages from wages for medical purposes are not within the Truck Act.

Again, it must be observed that when a collier has absented himself from the service (after entering upon it), and has been dealt with under section 9 of the Master and Servants Act, by an assessment of compensation, or a fine, without annulling the contract, it seems that if the term of the contract had not expired, by lapse of time, it remains in force after the amount is paid. If such a defendant continues to absent himself after payment, or imprisonment in default of distress, he is liable to be proceeded against a second time, just as much as if he had gone back to the work for a day or two and afterwards absented himself. See the case *Ex parte Baker* (26 Law Journ. M. C. 193).

The Effect of Work unskilfully or badly done.—The case of *Sharp v. Handsworth* (2 Cox's M. C. 171), contains the opinion of the Court of Queen's Bench on the defence that the work performed was badly done. The complainant was employed to make up blankets, to be paid for by the piece. He was paid part of his demand, and refused the remainder; and an order was applied for under the 1st section of 20 Geo. II. cap. 19. At the hearing the

master resisted the claim upon the ground that the servant had done his work so negligently that he incurred a loss far beyond the balance of wages claimed. The justice thought that the defence was matter of set-off, and decided that he had no jurisdiction. But the Court said that the case must go back for him to say whether the work was so badly done as not to entitle the servant to any wages, or to a deduction of wages. This kind of contract is a personal one, and is dissolved by the death of either master or servant, so that the servant cannot, for instance, be compelled to continue his service with the widow of the master with whom he contracted.

With regard to pecuniary fines, it has been decided in the case of *R. v. Biggins* (1 Cox's M. C. 488), that the justices may by their conviction order wages already due and unpaid to be abated, as well as wages to become due.

Lastly, it will be convenient to insert in this place a brief account of the new system of "Courts of Conciliation and Arbitration," which may now be found under the statutes 30 & 31 Vict. cap. 105.

This Act does not extend to domestic or agricultural servants. Under it any number of masters or workmen may agree at a meeting convened for the purpose to form a council of conciliation and arbitration, and may jointly petition Her Majesty to grant them a licence to form such council, which shall have all the powers granted to arbitrators and referees under the prior Acts, and the Secretary of State is empowered to grant such licence. Every council must consist of not less than two masters and ten workmen and a chair-

man. A chairman unconnected with trade is to be appointed, who will have a casting vote, and other officers necessary to conduct the proceedings are also to be appointed. The council, or a quorum of three, one being a master, and another a workman, with the chairman, may hear and determine all disputes between masters and workmen submitted to them. But a committee of conciliation is to be appointed by the council, who shall in the first instance take cognizance of disputes and endeavour to reconcile the parties in difference. If such reconciliation shall not be effected, the matter is to be remitted to the council. No counsel or attorney is to attend without the consent of both parties. The council is to be elected for one year. Thus it appears "that a rational method of arranging these classes of disputes has been discovered; from various sources we learn that there is every prospect of their receiving in future a more satisfactory solution than has been found in strikes." A court of this kind has been formed in the Potteries. At a large meeting at Hanley, Mr. Wise, formerly M.P. for Stafford, was in the chair, and made some valuable remarks. He stated that courts of this kind existed in ancient Greece and Rome, and had been in operation since 1803 in France, where there were 80 boards of conciliation. In the last few years 174,487 trade disputes had been settled by the lesser court, leaving about 10,000 for the decision of the higher branch. He added that these courts work well in Belgium, but have been most successful in Denmark and Norway, where the principle has been applied not only to trade disputes but to the settlement of differences in private life.

CHAP. XI.

THE RATING OF COLLIERIES.

THE incidence and burden of the poor rates and other rates collected under that name upon collieries and their appurtenances, is so important a matter as to claim special study and examination from every writer on that kind of property. In this chapter it is intended to point out the statutes which bear upon rating; and then to explain the meaning of rateable occupation; the principle or basis on which the rating ought to be settled, with the practical application of the principle to some particular cases. Some extracts from the leading cases which serve to throw light upon the various points will be quoted in support of the propositions advanced.

By the statute 43 Eliz. c. 2. s. 1, it is enacted that the churchwardens and overseers or the greater part of them shall take order from time to time, by and with the consent of two justices of the same county, whereof one to be of the quorum, dwelling in or near the same parish or division where the same parish doth lie, to raise weekly or otherwise, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate,

proprietors of tithes, coal mines, or saleable under-woods in the said parish, in such competent sum or sums of money as they shall think fit for the relief of the poor.

Coal mines are thus expressly made liable to the poor-rate.

By the Union Assessment Committee Act of 1862, provision has been made for securing uniform and correct valuations of parishes in the unions of England. For this end the board of guardians appoints not less than six nor more than twelve of their number to be the "Assessment Committee" of the union for the investigation and supervision of the valuations of rateable property. It is not necessary to refer more particularly to the enactments of that statute, which has no important bearing upon the principle and method of rating collieries. It will indeed secure a *uniform* rating according to some one system throughout all the collieries comprised in any union, but it does not affect to determine what that system shall be.

Although the statute gives authority to the officers of the parish to rate in such a sum as they may think fit, it does not import that they may arbitrarily impose the rate. They must rate the occupier fairly and justly, according to the value of his occupation, and with reference to the rating of others. The party rated may appeal against the rate on the ground that he is over-rated himself or that others are under-rated. The statute 6 & 7 Will. IV. cap. 96. enacts that the assessment upon lands, &c., is to be made upon an estimate of their net annual value, which is defined to be the rent at which they might

reasonably be expected to let from year to year, free of all tenants' rates and taxes and tithe commutation rentcharge, if any, and deducting the probable average of annual costs of repairs, insurance, and any other expenses which may be necessary to maintain the premises in a state to command such rent.

It will have been seen that the rate is to be by taxation of every "occupier" of coal mines, &c., and it is, therefore, necessary to state in general terms who are to be considered as the occupiers of this description of property. The occupier intended is the actual tenant, and not the owner or landlord. But when the owner occupies the property by his servants or agents, then he is rateable. A question may occasionally arise as to who is the person who ought legally to be rated in respect of the occupation of a colliery. If the person in occupation be a lessee, there can be no doubt that he is the occupier, inasmuch as the lease under which he holds the colliery is a distinct conveyance of an actual interest in the property demised. But a licence to work minerals is distinguishable from a lease, and is only an incorporeal hereditament, or mere right. Yet, as it confers a right to enter and occupy, and to carry away part of the land itself, viz. the minerals, it seems clear that such a right as this is an interest in land. The grantee of such an interest may have an exclusive right to the possession of the colliery against the lessor and all other persons. In such a case he is to all intents and purposes the occupier of the colliery. In the case of *Rex v. The Trent and Mersey Navigation Company* (4 Barn. & Cres. 57), that company had agreed with the owners of certain

limestone quarries that the latter should deliver to the company such a quantity of stone as the company should yearly direct at a certain price ; and in case of neglect or refusal, it was to be lawful for the company to enter and take away as much stone as they thought proper, paying for it at a reduced rate. The company afterwards did enter and work the quarry, and were rated for the property. The case was sent back by the Court of King's Bench to the quarter sessions to ascertain whether there had been an *exclusive possession* by the company. Upon the affidavits, however, the court thought that the right of the company was merely to get what stone they might think fit, and that there was nothing in the contract to prevent the owner from giving to others also the privilege of getting stone in the quarry. The company had not therefore any sole and exclusive occupation, but a mere privilege, and consequently were not liable to be rated.

The point cannot be said to be clearly settled, but it would probably be now held that the grantee of a licence to work minerals which conferred an *exclusive privilege* as against all others is the proper person to be rated as the occupier. For if he could not be legally rated, it is difficult to see what other party could be.

In the case of *R. v. Tremayne* (4 B. & Ad. 162), the owner of land had granted to certain persons a liberty to dig for ore, receiving 1*l.* 15*s.* for every ton of manganese raised during the term, free of all expense. Mr. Tremayne was assessed in respect of the sums he received. But the general principle was

clearly laid down by Mr. Justice Pattison, who said (adopting an earlier decision), "Where a person receives without risk part of the produce extracted from the bowels of the earth, he is an occupier of land; but when he merely receives a rent or money payment, then he is not an occupier. Here Mr. Tremayne was not the receiver of what is extracted from the bowels of the earth, but of money; he is therefore not liable to be rated as an occupier of land."

The next point relates to the position of the occupier with respect to the value of his occupation. There is no doubt that the occupation must be *beneficial*, or rather, profitable, in some sense; that is, some advantage and profit must attend it, and consequently, if a colliery is shut up, and not worked at all, it is not, during that period, rateable. But in order to show a right of exemption from rating, it must be proved that the occupier receives nothing from the property for himself or for anybody else, and that if he were assessed he would have no funds out of which to pay the assessment, except resources not drawn from the property in question. A recent case (*Jones v. Mersey Docks Board*, 35 Law Journ., M. C. 1) has decided that if the occupation is such that it does produce profit—that is, if it is capable of yielding a net annual rent above the average annual cost of repairs, insurance, and expenses necessary to maintain the concern in a state to command such rent—the property is always *prima facie* liable to be rated. It is immaterial whether the profit is retained, or whether it is paid over to a charity or a trustee, or *any other person*, provided the occupation is such that if it were demised

to a tenant paying a rent, a rate must be put upon it. But in order to show that there is a benefit, there must be *some justly estimated rent*, and if the property is not let, that rent must be such as a hypothetical or imaginary tenant would give if he occupied it. These propositions are mainly taken from the judgment of Mr. Justice Blackburn in the case of the Corporation of Lincoln *v.* Overseers of Holmes Common (4 Cox's Mag. Cases, 457). And in a later case Mr. Justice Mellor is said to have observed that the effect of the case of Jones *v.* Mersey Docks Board is that the occupier of property which is *valuable* is *rateable up to its value*, whether or not he receives the value to his own use; whereas it had been previously supposed that it was only a beneficial occupation that was rateable. In other words, the property must be valuable before it can be rateable, though it may yield no value to the actual occupier. In applying these propositions to a colliery it is evident that the occupier of a coal mine is not rateable for it before it is worked and productive. So also, if the workings are exhausted and "the subject matter of profit is utterly gone, it is not rateable, though the rent which was probably calculated upon the average produce of the whole term be still payable. But with respect to the parish he is only rateable for the concurrent annual value during the period for which the rate is made; and when the thing which he occupies no longer affords any such *concurrent* value, the subject matter of the rating is gone." So spoke Lord Ellenborough in the case of R. *v.* Bedworth (8 East, 387).

Therefore it appears that if competent persons come

to the conclusion that under the special circumstances of the colliery no rent could be obtained, if it were in the market to be let, then that colliery would not be liable to be rated at all. The case of *R. v. Parrott* (5 T. R. 593) may seem at first sight to be in conflict with the above proposition, because the colliery was a losing concern in the hands of the occupying tenant. But Lord Ellenborough, in the case of *R. v. Bedworth*, expressly distinguished that case from *R. v. Parrott*. He said, "There the subject matter itself was profitable and produced value to the owner, though the immediate owners derived no profit from it. But here the mine itself is exhausted, the subject matter of profit is gone, although the rent, which was no doubt calculated upon the probable average produce of the whole term, is still payable."

In the case of *R. v. Parrott*, the facts were that certain persons were in possession of a colliery under a lease by which they were bound to work the colliery, and pay a sixth part of the money produced by the sale of coals, without any deduction, to the lessor. Upon an average of the last three years they paid 3,001*l.* 15*s.* 7*d.* as such sixth part, and lost two and a half farthings on every ton of coals. The colliery was always a losing concern from the first. But Lord Kenyon, C. J., said, "Suppose a landlord makes so hard a bargain with his tenant that the latter derives no benefit from the farm, must not the tenant be rated to the poor? The landlord certainly is not liable. It appears in this case that there has been a clear profit of 1,000*l.*"

It seems, upon the whole, that so long as any profit is realised by the owner or occupier out of a subsisting subject matter which is legally liable to the incidence of the rate, so long will that property be rateable, although it may be a losing concern in the hands of some of the parties interested.

If these cases do not seem at first sight to be perfectly clear, they may be epitomized thus:—If a colliery is absolutely unproductive, it is not rateable, though the lessees may by a bad bargain be bound to continue payments to the lessor. But if the colliery is at all productive and a rent is paid, the occupier is rateable, though the concern may be to him unprofitable. The question who is to be considered the occupier is a matter of fact, to be found, if disputed, by the Sessions, and the Court of Queen's Bench will hold themselves concluded by their finding.

The next and most important question is, how and upon what principle or basis is the actual rateable value to be obtained. Here we approach the practical methods of rating collieries, and in dealing with this question the enactments of the Parochial Assessment Act must never be lost sight of. The poor-rate is imposed in respect of the net annual value of the property, which the statute proceeds to define to mean the *rent* at which the same might be *reasonably* expected to let from year to year free of all the usual tenants' rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average of annual costs of repairs, insurance, and any other expenses which may be necessary to maintain the

premises in a state to command such rent. It should also be kept in mind that all property is supposed by law to be rated at its entire value, as contradistinguished from a rate upon only an aliquot part of its value; but as in respect of the distribution of burden, the effect of rating it at only a part of its value is the same as rating it at its entire value, such a mode of rating is legal. The primary rule is, that the rate must be so made or proportioned as to bear equally on all the ratepayers. It is obvious that a rate would be unequal in which some persons were rated at the actual and present value of property, and others, whose property had been improved, were rated only at some former value; a parish, therefore, cannot have a standing rate; nor can an old rate be confirmed merely because it is an old rate: for there may have been changes in the value of property. Keeping these rules in view, we observe that there is a large class of properties which are indisputably rateable, but in practice are rarely if ever let *from year to year*. Such are gas-works, docks, water-works, railways, canals, and collieries. Nevertheless they are all rateable and generally valuable, and the valuer employed by the Assessment Committee must use his best endeavours to arrive at a correct notion of a rent *for the rating year*.

There are various methods by which the professional valuers seek to arrive at the true rateable value of collieries. One system is to assume that an imaginary tenant pays to the lessor of the coal, in addition to the royalty and the rent of the damaged land, a reasonable

“shaft rent” representing the interest on the capital invested in sinking the shaft. He is also assumed to pay what is arbitrarily called a “rent” on the fixed capital invested in the buildings, plant, and machinery necessary to work the mine. The gross estimated yearly rental of the coal itself is calculated at the present market price, and on an average of three previous years. The gross estimated yearly rent of the buildings, machinery, &c., is taken at six per cent. per annum on the present capital value of the same. From the total of these rents is deducted the probable average annual cost of repairs, insurance, and other expenses necessary to maintain the colliery in a state to command such rents. There is, doubtless, merit in this plan, but the ingredient of the shaft-rent is a conjectural item which would involve much contention.

Another plan is one which has been adopted at the Glamorganshire Quarter Sessions, and assumed the following form :—

ESTIMATE of COAL raised in A.B. colliery.

—	Statute tons.	Value per ton.		Total value.
		s.	d.	
Large coal	46,771	6	0	14,228
Brush coal	9,592	5	0	2,380
Small coal	53,471	4	4	11,584
	109,834	-	-	28,192

N.B.—The coal used for the engines, &c., is excluded from calculation.

ESTIMATE of EXPENDITURE in raising the coal, and of deductions and allowances made in order to arrive at the rateable value of the colliery.

—	Per statute ton.	—
s. d.	£	—
By expenses for cutting narrow and dead work; underground and surface labour, materials and stores, rates and taxes, management and contingencies on the spot or at the general office, on 109,834 statute tons at - - - - -	3 9	£ 20,594
By tenant's interest and profits on floating capital at £6,000, and on moveable plant at £2,866, i.e., a total of £8,866, calculated at 17½ per cent. - - - - -	- - -	1,651
By allowance to provide for depreciation of fixed plant valued at £7,400 - - - - -	- - -	£150
Total - - - - -	- - -	22,295
Leaving a balance of - - - - -	- - -	5,837
		£28,192

In calculating the expenditure of the concern the valuers for the appellants and respondents differed slightly in the amount per ton. The former, representing the occupiers, reckoned the outgoings as 3s. 11·04d. per ton, and the valuers representing the rating authorities, said they only amounted to 3s. 6·825d. The court took a mean between these calculations, there being no dispute between the valuers as to the correctness of the items to be introduced into the calculation.

The actual royalty reserved was 8d. or 9d., but after hearing the evidence it was the opinion of the court that under all the existing circumstances of the

colliery in the current year it might and ought to be augmented to $11\frac{3}{4}d.$ per statute ton as the fair letting value of the coal at that time and place. This royalty of $11\frac{3}{4}d.$ on the whole quantity raised, less the quantity consumed in raising it, viz. 109,834 statute tons, gave a result of 5,377*l.* as the proper rateable value.

Another system, advocated by Mr. Hedley of Sunderland, is referred to for the purpose of showing how hopeless it must be to expect to discover any uniform views in the opinions of professional men. He designates the following as his amended sketch for the valuation of a colliery:—

Gross value of coal produced	-	-	-	£12,000
Working expenses 60 per cent., and other expenses	-	-	-	8,700

Gross profits	-	-	-	3,300
Allow 5 per cent. interest, and 25 per cent. tenant's profits on tenant's capital of 4,950 <i>l.</i>	-	-	-	1,482

Gross rent	-	-	-	1,818
Deduct fund to reproduce 15,000 <i>l.</i> ex- pended in winning the colliery, at the end of 14 years	-	-	-	765

Rateable value	-	-	-	£1,053

It is but fair to add that Mr. Hedley evidently thinks 14 years a very short duration for a colliery which has cost 15,000*l.*

Again, some years ago Mr. Bromley, a mineral surveyor from Derbyshire, gave some interesting

evidence as to their proceedings in that coal-field. There the rate is made, not upon the royalty, but upon the probable value. The coal is said to lie in very regular strata, and it is known how much it will produce per acre. Some coal is worth 60*l.* an acre, and some is worth as much as 200*l.* when it is brought to the surface. In the collieries with which he is connected, they bind the tenants to get three acres of the coal per annum. If they get less, they still pay for three acres, and if they get more they pay so much extra in proportion. They are allowed to make deductions from them quarterly in respect of faults that occur in the working. The seams of coal are small, and the system is long work, or, as the witness expressed it, "all work." The rent is calculated, not (as in Wales, &c.) upon what the tenant actually gets in number of tons, but upon what he is bound to get in area, and upon any excess over that quantity, or rather, area. Surveys are made, and the amount of coal got is calculated by measurement of the area, and the rate is made to fall upon the same quantity, and value, and area, as the rent. Thus the rate is made upon the same principle as that upon which it is applied to land, namely, what a tenant would give as net rent from year to year for the occupation of a certain area. A deduction of one tenth is made in favour of the occupier, but it does not appear upon what ground that is so made. This is a very simple system, and it presents no practical difficulty in the calculations. But as it depends upon a peculiar and local method of leasing or letting, it is at present only locally applicable.

There is another curious theory put forth by Mr. Mathews, a coal master in Staffordshire. He holds that the annual income from a colliery should be supposed to be invested and the occupier rated upon the proceeds of it as an annuity! So that if the royalty amounted to 1,000*l.* and it were invested at four per cent. the rateable value would be 40*l.* This system was gravely pressed upon a committee of the House of Commons two years ago.

Having stated some of the methods of arriving at a rateable value, the next question to be considered is whether the courts of law have so far settled any of the points that have been disputed as to remove them from the sphere of contention. The following proposition has been clearly laid down by the Court of Queen's Bench, and governs every case of rating: "We are of opinion that the standard of value adopted by the legislature is the *value of the property to the owner*, whether it remains in his own occupation, or is let to a tenant." (R. v. Wells, Law Rep. Q. B. 1367, p. 574). The rate falls in the first instance upon the occupier of the colliery, but the definition of annual value in the Assessment Act and the law laid down by the court restrain the valuer from imposing the rate upon the commercial profits of the whole concern in the hands of the occupier. Those profits would indeed be the annual value to him, but the statute defines its annual value to mean a certain ascertained "rent." Hence it follows that it is only such profits as are fairly the landlord's share, as indicated by the meaning of the word "rent," which constitute the *rateable* value. The real annual

value of the territorial hereditament is the object to keep in view, and should be kept separate from the capital employed to carry on the work. That capital is not rateable unless it has been laid out in such permanent erections and machinery, &c. as would pass in a demise as part of the concern. The occupier is rated because he is the visible person in possession and occupation, and the old statute casts the rate upon him. But the rule ought to be kept steadily in view that so much of the occupier's capital as is involved in the mere carrying on of the business is a distinct item altogether, and the union has no claim to any assessment upon that amount. The best notion of the proportion of profit which is liable to the incidence of the rate is to be obtained from the definitions of the word "rent," which is the governing word in the statute, and cannot be omitted from any calculation. Rent is defined by Malthus to be "that portion of the value of the whole produce which remains to the owner of the land after all outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed estimated according to the usual and ordinary rate of profits of agricultural profits at the time being." It is defined by Ricardo as "that portion of the produce of the earth which is paid to the landlord for the use of the *indestructible powers of the soil*," and he adds that it is often confounded with the interest and profit of capital. Such is the idea of "rent," which is the measure of the "net annual value" upon the estimate of which the assessment to the poor-rate is to be made.

Improved Value.—Another proposition has been

distinctly laid down and variously illustrated by the Court of Queen's Bench, namely, that in arriving at the rateable value of a colliery the present improved or augmented value must be the test. It is quite clear that all existing bargains, agreements, and arrangements must be deemed as being at an end for the purpose of valuing the property. It has been well observed by Lord Denman that we must not confound that which the lease conveys the title to with that which it gives the lessee the power of doing or obtaining. It is the latter which regulates the rent the tenant will give, and not the former. The landlord must be supposed to let the works in their actual condition and circumstances in and for the current year. It is not the seams of coal alone that are to be taken into the calculation, as is the case between the lessor and the lessee at the commencement of most leases. The union has the right of drawing into the valuation all the machinery, staiths, buildings, way-leaves, and other incidents of a similar kind which have rendered the mine itself more fruitful and valuable. The royalty reserved and paid by virtue of the lease is, doubtless, one criterion, and an important one, of the landlord's share of the profits of the mine, but it may not represent the *entire* rateable value of it. The capital expended in fixed machinery and permanent erections becomes subject to assessment in the hands of the lessees, upon the ground that those additions or annexed properties become part and parcel of the concern as it stands, and would pass, unless specially excepted, in a demise of the colliery to a new lessee. A parish cannot have a standing

or permanent rate, because the value of property, especially of mineral property, fluctuates from time to time, and consequently the proportions fluctuate. And it is of the very essence of the rate that the proportion of the burden borne by one ratepayer should be equal and just with reference to the rest. The tenant must be supposed to take the works from year to year at the date of the rate, and to undertake to keep them in their present condition, so as to command the rent he binds himself to give. Upon that supposition the valuers ascertain, to the best of their ability, what amount of royalty (which is the ordinary form of payment to the lessor) such a tenant would pay, and that gives the gross estimated rental from which the deductions to be presently referred to would be allowed. For example, if a house was let last year at 25*l.* per annum, but is now let at the improved rent of 35*l.*, the rate of the current period must be made upon the latter sum. As a general rule, wherever the value of the occupation is enhanced by collateral circumstances arising out of the occupation itself, and not merely personal to the individual occupier, such improved value is that upon which the rate should be made, as where the value is increased by the annexation of machinery fixed to the freehold. (*R. v. Haslam*, 17 Q. B. 220.)* Thus, where a rate was appealed

* The following is an example of the arbitrary system of rating machinery in conformity with the supposed requirements of the law:—Messrs. P— are rated for coal from D— colliery, at 1,111*l.* 17*s.* 6*d.* The large coal is rated at 7*d.* on 23,927 tons, and the small at 4*d.* on 554 tons; total quantity raised, 24,481 tons. Two engines, each 70-horse power, are

against because the appellant was rated on the full value of his occupation, but a gentleman who had bought an estate which he occupied himself was rated at 29*l.* a year, though he had improved it to the value of 175*l.* a year, the court held that the latter sum was the rateable value. And in the case of *R. v. Attwood* (6 B. & C. 277), it was laid down that "if the tenant of a mine expends money in making it more productive, that is the same as expending money in improving a farm or a house, in which cases the tenant is rateable for the improved value." In short, it must never be forgotten that the propriety of a poor-rate can only be determined with reference to the facts found to be actually existing when the rate is made. This rule of rating is not doubted, and needs no further illustration in this place.

Legal Deductions.—The next point for inquiry is, whether any and what deductions from the gross estimated rental of a colliery are recognized by

rated at $\frac{1}{4}d.$ per ton, each 102*l.* They are also rated at $1\frac{1}{4}d.$ per ton per mile for 21,000 tons as the quantity sent to a certain railway. The remaining quantity is sold on the spot, or consumed by them. The length of their own railway (which conveys the coal to the main line) is $1\frac{3}{4}$ miles. The length of the tramways is 550 yards. They are also charged on the same quantity of 21,000 tons at $1\frac{1}{4}d.$ per ton per mile in respect of the tramroads. Two weighing machines are rated at $\frac{1}{2}d.$ per ton on the full quantity of coal raised. On the reservoirs and water-springs they are only rated on the 21,000 tons at $\frac{1}{2}d.$ per ton. Screens and cranes for tipping coals are rated at $\frac{1}{2}$ of a penny per ton. Incline draw-machines working 21,000 tons are rated at $\frac{1}{2}d.$ per ton. Smiths' forges, carpenters' shop, offices, stables, and lime-kilns, are all rated separately. Ground for rubbish is also rated separately, at 2*l.* 16*s.* per acre.

law, and sanctioned by the judgments of the courts. This is a very important branch of the subject, because experience proves that almost every dispute and appeal turns upon the nature and amount of the deductions proposed in the particular case. The first proposition to be kept in mind is this, that whatever deductions are claimed, must always be covered by and referable to the language of the Poor Law Assessment Act. It will be convenient to quote the very words of the famous section which has produced so much litigation. The rate is to be made upon an estimate of net annual value, that is, of the rent at which the property may reasonably be expected to let from year to year, free of all usual tenants' rates and taxes and tithe commutation rentcharge, and *deducting* therefrom the probable annual average cost of the repairs, insurance, and *other expenses, if any, necessary to maintain it in a state to command such rent.* In readjusting the royalty which (as has been seen in the example of a rate in Glamorganshire) is taken as the measure of rent and rateable value, the gross produce of the mine is to be ascertained. On the other side the sums that may be legally set off and deducted must also be ascertained. The first deduction is in respect of those rates and taxes which legally fall upon the occupier. As to these it is only necessary to state that the rate laid down by the court is that the allowance in respect of rates and taxes is to be made upon the *net* rateable value of the property after the rates and taxes themselves have been deducted. (R. v. Tyne Improvement Commissioners, 2 Cox's Mag. Cases, 92.) The next deduction, is the

amount found by experience to be necessary and proper for ordinary annual repairs, and for replacing such parts of the plant as must from time to time be worn out. But here a distinction must be carefully kept in mind. If the assessment committee, or the court of quarter sessions, being dissatisfied with the actual royalty as rateable value, proceed to readjust it upon evidence, and throw overboard the actual bargain between the lessor and lessee, the special stipulations of the lease as to repairs and renewals must also be taken as expunged. The occupier is by this proceeding reduced to the situation of a tenant from year to year. Consequently, it becomes needful to recur to the rules of common law in order to ascertain his position as to repairs. Such a tenant is not liable for the ordinary effect of wear and tear and lapse of time upon the demised property. He is not responsible for any substantial repairs, but only for such slight reparations as are usually called "tenantable" repairs. Under these circumstances it is obvious that the liability for losses from wear and tear, time, tempest, fire, &c., falls upon the supposed landlord, and it is equally clear that a deduction must be made in respect of all the average annual repairs from the gross estimated rental. This has been recognized by the Court of Queen's Bench in the following language. "The next question is whether any allowance should be made in respect of any contingent or future renewal of buildings or machinery. We are of opinion that such allowance ought to be made. Farm buildings and machinery are by the effects of weather and wear and tear reducible to a

state which will render them unworthy of repair, and necessitates their reconstruction. They cannot at length be kept up but at an expense which renders it practically impossible, because not reasonably prudent, to keep them up. Provision made for a future liability to reconstruct them is an expense which may be properly included among the expenses necessary to maintain a hereditament consisting in part of subjects perishable in a state fit to command the rent, and which it does, in fact, while standing and in use command. There seems to be no distinction in principle between a sum annually laid by to make good, when it shall become necessary, *an inevitable loss by the destructive agency of time, and a fund laid by for an indemnity against a loss by fire or other peril insured against.*" (R. v. Wells, Law Rep. Q. B. 1867, p. 547.) And again in the case of Rex v. Tomlinson (9 B. & C. 163), Mr. Justice Bayley observed, "The rate is to be made on the occupier according to the annual profit of value which the subject of the occupation produces. In the case of houses, the annual profit is a part only of the annual rent paid to the landlord. Some portion of that rent ought to be set apart to form a fund for repairing or rebuilding when necessary. In the case of collieries, likewise, a part of the annual rent must be appropriated to repair and replace the works and engines, and in that respect they are in the same situation with houses. The actual amount to be allowed must be ascertained by referring to the opinions of competent and credible witnesses."

If, however, the court adopts the royalty reserved

by the lease as the rateable value, and *the lessee* has covenanted to keep the premises in substantial repair, then the rule as to deduction for repairs is different. If the gross estimated rental is the actual rent, and that rent *bonâ fide* represents the rent at which the property might reasonably be expected to let from year to year, on the terms that the tenant takes upon himself the repairs, it is decided that the cost of such repairs ought not to be deducted from the rent in order to arrive at the rateable value (R. *v.* Wells, see above). In other words, if the royalty is a fair one for the current year, no deduction from it is allowed in respect of repairs where the lessee is bound to do them.

The next item, *viz.*, that of insurance, needs no comment. If any part of the premises which would pass under a demise is insured, the lessee is entitled to a deduction for premiums paid from the gross estimated rental. Nor does the item of tithe commutation rentcharge (if any) require any explanation. But the last head of deduction named in the statute is also the most difficult and most fruitful of controversy, *viz.*, other expenses (if any) necessary to maintain the property in a state to command the estimated rent. By various decisions of the Court of Queen's Bench, this head of deduction has for the most part been freed from doubt and difficulty. It may now be stated without fear of contradiction that if evidence is given that a certain capital is required and involved in the mere carrying on of the trade, and without which floating sum or cash balance the business could not be carried on in the ordinary manner,

the occupier is entitled to a deduction from the gross estimated rental for interest and trade profits upon such amount. This allowance was considered and sanctioned in the case of *R. v. Grand Junction Railway Company* (13 Law Journ., M. C. 103) in the following terms :—“ The gross yearly receipts of the company as occupiers and carriers *must* include the proper subject matter of the rate. They have therefore taken a sum agreed to represent those receipts ; *they then assume an amount of capital employed in the trade*, and deduct from the gross receipts five per cent. on this latter sum for the interest on this capital, and 20 per cent. for the profits *which ought to be made upon it* ; thirdly, for the depreciation of stock beyond the usual repairs and expenses ; fourthly, they deduct the annual cost of conducting the trade, &c. These deductions seem to us to include whatever is properly *referable to the trade* as distinguished from the increased value which that trade gives to the land ; if these are proper deductions the residue must represent the value of the occupation, and if so, this alone is brought into the rate, and the profits of the trade are excluded. Accordingly the sessions have found as an inference from the facts that the residue is the sum which a tenant from year to year might be expected to give, &c. *If the deductions exhaust that portion of the receipts which is referable to trade* the inference is fair.” It is true that this is not the case of a colliery, but so far as it relates to the propriety of a deduction for profits of trade it is entirely in point. Independently of authorities the deduction is right upon principles of equity and reason. The bargain

between lessor and lessee is neither more nor less than a sale and purchase of dormant seams of coal, to be paid for by instalments spread over a long period, and worked under certain stipulations. The business of the lessee is to bring those seams to market at a profit; that is to say, he ought to have an excess or margin in the price received for his own private advantage over and above royalty, labour, materials, and every other necessary current expense. That margin represents the profits of trade. It is the difference between the value of the various advances necessary to produce a commodity, and the actual market value of that commodity when produced. The coal could not, of course, be brought to bank and surface without such advances, amongst which is the use and command of a certain floating capital, in proportion to the nature of the speculation. The lessee's capital is both fixed and floating. The fixed capital in the form of machinery and buildings attached to the freehold is, as we have seen, rateable as improving the value of the premises. The floating or circulating capital in the form of cash balances for immediate use, stores, &c., is one of the expenses inseparable from such a speculation as a colliery, and is not rateable in any form. The fair per-cent-age which ought to be allowed on this circulating capital is a question of evidence founded upon the knowledge of the average profits of business in that department. When the risk and uncertainty attending all mining operations are considered, 20 per cent. does not appear to be excessive. The proper amount, however, is not within the scope of this treatise to settle; nor does the author propose to add

anything as to the fair proportion of floating capital to the needs of any working colliery. It will be seen by reference to the Glamorganshire case that where 109,834 tons were raised, exclusive of coal used in raising it, the capital was assumed to be 8,866*l.*, consisting of 6,000*l.* of floating capital, and 2,866*l.* as moveable plant. With respect to this item, there was evidence that more than 8,000*l.* was owing to the appellants at one time, and that they were liable to be called on at any time for payment of heavy amounts.

From all the foregoing considerations, and giving due weight to the various authorities which the author has been able to consult, and keeping in mind the present enactments of the law, he arrives at the conclusion that the present legal basis for rating a colliery is a royalty adjusted from time to time by a reference to all the existing circumstances of the individual case. It may be a difficult calculation, but it is not beyond the powers of skilled and candid men. It is probable that every period of five or six years would make an appreciable difference in the amount of royalty that the imaginary tenant ought to give for the current year, and a readjustment ought consequently to be effected. It may be asked why the royalty fixed by the stipulations of the lessor and lessee should not be taken as the best test of the landlord's share of the profits. The answer is that the assessment committee are entitled, as the law now stands, to take into the calculation the value of the capital which has been expended upon the mine, and upon fixed machinery and buildings. They are also entitled to assume a tenant coming in that very year to enjoy

all the existing advantages. It may be that the landlord was desirous of encouraging the adventure, and was content with a very low royalty, say sixpence per statute ton. It cannot be disputed that there are hundreds of cases where a new tenant would gladly take the place of the original lessee with the burden of double or treble the original royalty. It may be said that a royalty is not, strictly speaking, rent. No doubt it does not fall accurately under the definition of rent, and some of the legal incidents of "rent" may be wanting. But inasmuch as it is the ordinary mode by which the lessee of this rateable property transmits to his landlord the landlord's share of the profits, it must be taken as the best available means for estimating the net annual value. "Royalty," says Mr. Lumley, "must be considered as rent." Mr. John Taylor, who has great experience in these matters, says, "I look upon it as a rent precisely." It is undoubtedly an exceptional and anomalous system. It is adopted as a basis of rating under the pressure of custom, legal enactments, and natural circumstances. The vast majority of the owners of coal demise the right to cut it in consideration of such and such royalties per ton or ten. Then the statutes insist that the occupier shall be rated, and that the rateable value shall be the net rent which a tenant would give for the current year. The rateable subject matter differs from every other rateable property except a brick-field in the circumstance that it is not annually fructifying, but is being annually destroyed. Then again no person does in practice ever take a colliery from year to year. Here is a combination of incidents which sets at defiance

every normal plan of striking the rate. All that can possibly be done is to approximate as nearly as may be to the sum which the prospect of a commercial profit upon floating capital might induce an adventurer to give in the customary form of royalty for the right to come in and work the coal with all existing appliances. It might indeed be contended with reason that the supposition of a rational person offering to take a colliery from year to year is too absurd to be entertained. It would, doubtless, be so if it had not been distinctly laid down by the judges that it is legitimate to assume that such an adventurer need not be supposed to limit his view to the current year, but ought to be supposed to look forward to the diminution of the corpus of the property every year, and to have his eyes open to the chances of continuing as lessee, and the probable duration of the seams, &c. He would probably bind himself to pay some fixed, certain, or dead rent. But a rent of this kind, which is part of the usual contract between lessor and lessee of coal seams, is not the criterion of annual value. It is generally intended to operate not as the full rent of the colliery, but as a security or guarantee that the seams taken will be properly worked. The sum reserved per ton is always the main source of benefit to the lessor in a prosperous colliery in full working and let upon this system. As to the system of letting coal by the acre, with a covenant to work so much every year, that involves a different mode of payment to the landlord, and consequently a different method of rating. It has been described in the former part of this chapter, and is a peculiar and local system

which does not extend into the principal coal-fields. With respect to the system of rating upon royalties, it may be said that the amount which reaches the landlord is very small in comparison with the selling price of coals, as where the royalty is 7*d.* or 8*d.* and the price 6*s.*, and that the rate is consequently placed upon too narrow a basis. But the answer to this objection is given by Adam Smith, who says that rent has generally a smaller share in the price of coal than in that of most other parts of the rude produce of land. "The rent of an estate above ground commonly amounts to what is supposed to be a third of the gross produce, and it is generally a rate certain and independent of the occasional variations of the crop. In coal mines a fifth of the gross produce is a very great rent, a tenth the common rent; and it is seldom a rent certain, but depends upon the occasional variations in the produce." Labour, interest upon capital expended, and ordinary tenants' profits, make up the greater part of the price demanded. From this and other passages in his work it is clear that this eminent writer considers the small and uncertain amounts which find their way into the landlord's pocket as in the nature of a reasonable rent. This point has also received much elucidation from a judgment of the Court of Queen's Bench in the cases of *R. v. Westbrooke* and *R. v. Everett* (16 Law Journ. M. C., 87, and 10 Q. B. 178). The question raised was the proper mode of rating the occupiers of brick-fields. It is obvious that there is much similarity between the case of a brick-field and that of a colliery. The tenancy of the brick-field was of some years' duration,

and the rent in part fixed, and in part made to depend, in the nature of royalty, on the number of bricks made. The material, the brick-earth, is not in its nature renewable, and would be consumed in no great number of years. In short, the very corpus of the estate, as in the case of a colliery, was being gradually removed. The basis of the rate was the supposed total amount paid to the landlord, considering as well the royalty as the fixed sum to be rent, and to be the proper criterion for assessing the amount which a party may be reasonably expected to pay as rent from year to year free of such charges as the statute allows to be deducted. It was objected to the rate that it was wrong to conclude that because there were so many stools on the ground from which so many thousand bricks may be made in each year, that so many will in fact be made and paid for. This objection would equally apply to a colliery, because the rate is always made prospectively upon an estimate of probable profit derived from past returns. But the court said that "the parish officers might well look to see what probably the land would produce in the current year. They may as well proceed with a brick-field" (and therefore with a colliery) "as they would with land used for agriculture. They cannot in that case tell how much produce will be raised, still less at what price it will be sold. Yet if the tenant occupies at a rent to be ascertained in each year by the actual produce and price, as it well might be, they may reasonably infer from the nature of the premises, the cultivation, and the preparations, what would be the rateable value in a given year. The next objection is

that it is altogether wrong in principle to consider royalty as rent ; and this appears to be founded on this, that it is a sum paid, not in respect of the renewing produce of the land, but of a portion of the land itself, and that not consumed by slow degrees, to be exhausted at the end of a long period—*as in the case of a coal-mine, under which circumstances, it is admitted, it might be treated as produce*—but in such large proportion that in a few years the whole will be consumed. It does not seem to us that the more or less rapid consumption can make any difference in principle ; the rate is always imposed in reference to the existing value—whether temporary or permanent is immaterial. The case was supposed of a brick-field being worked out in a single year to meet a contract for a public work. The consequence would be, the land would have a much increased value for that year, and it would be reasonable it should bear an increased rate for that year, though in the following year its value might sink almost to nothing, and the rate would fall in proportion even to nothing, if the brick-earth were exhausted, and therefore, like an exhausted coal-mine, should become entirely used up. If this were not so, an obvious injustice would be done to the other ratepayers. The royalty is a sum which, after expenses paid, the occupier can afford as a rent to the landlord. When the case is thus laid bare, there is no distinction between it and that of a lease of coal-mines, &c., in respect of which the occupation is only valuable by the removal of portions of the soil ; and *whether the occupation is paid for in money or kind, and the amount is fixed beforehand by the con-*

tract, or measured afterwards by the actual produce, it is equally in substance a rent ; it is a compensation to the landlord by the occupier of the piece of land for that species of occupation which he contracts to give. We are brought, then, to the conclusion that the parish officers have done right in considering the royalty as a portion of the rent, and we see no objection to the conclusion at which they have arrived, that *prima facie* the amount of royalty reckoned in the rate will be paid in the year for which the rate is made. Still it must be always remembered that the ultimate question is that propounded by the statute ; and therefore the amount that has been paid, and which it is reasonable to infer will be paid, is *only evidence*, and not the fact itself to be ascertained. When, therefore, the case came to the sessions, it was open to the appellant to prove such uncertainty in the market, and also all such circumstances as showed that the parish officers had done wrong in concluding that from such a quantity made, or expected to be made, the land might reasonably be expected to let from year to year at a rent measured by that quantity.

..... The true question is, what is the rent at which the land might reasonably be expected to let from year to year, remembering the purposes to which it is to be applied, and the privileges which the tenant will enjoy under his contract, and by reason of the occupation, and after making all the deductions required by the statute."

Another authority on this head is to be found in the resolution of the committee of the House of Commons on the proposed Mines Assessment Bill,

which was embodied in the following terms: "In the case of mines and minerals let to a tenant the royalty or rent reserved to the owner shall, until the contrary be shown, be deemed to be the assessable value of such mines and minerals." They came to this resolution after hearing a great mass of evidence from witnesses of great and varied experience. Their conclusion appears to be in conflict with the theory that an *adjusted* or resettled royalty is the true measure of rateable value. But if their resolution were to obtain the force of law it would have much to recommend it. It would greatly simplify the work of the assessment committees, and save much trouble to the proprietors of collieries. In the present state of the law it cannot be adopted, because the varying condition of a colliery must necessarily influence the amount of royalty which a tenant would give in some particular year. But it may well be doubted whether, looking at the *entire period* covered by the lease, the actual bargain made between lessor and lessee may not be the fairest as well as the easiest measure of a rateable value. The doctrine of a readjusted royalty seems to imply a claim to an occasional *reduction* as well as an occasional increase of the actual royalty, according to the evidence of current market value. The occupier may have unexpectedly met with a fault he never dreamed of, or the workings may be flooded, or the quality of the seam may be deteriorated, or the demand relied upon may break down, or many other casualties may occur. Evidence of such circumstances might compel the valuers to testify that the original royalty was fixed at too high a figure. They are

bound by the statute, and if they increase a royalty upon evidence, so upon evidence it is difficult to see how they can refuse to reduce it. Whereas the royalty fixed at the commencement of the lease is in the nature of a speculation. For instance, the royalty of one shilling may be too small a share of the profits for the landlord when the coal lies close to the bottom of the shaft, though it may be too large a share in the last years of the lease, when vast roadways have to be ventilated and the minerals are dragged over a great length of tramways. It is true that the actual royalty paid to the landlord will probably be always taken as the minimum value for rating purposes. But, nevertheless, if it is clear from evidence of casualties that no new tenant would come in and undertake to give the actual royalty in the current year, it seems logically impossible to prove that the occupier is for rating purposes legally tied to that excessive royalty, while he is not to be rated upon an inadequate royalty.

The difficulties connected with the adjustment of royalties would be obviated by adopting a kind of sliding scale, and fixing them at one tenth or one twelfth or some other proportion of the selling price. The author is informed that this method is actually adopted in certain mineral leases granted by the Duchy of Lancaster, by the Earl of Warwick, and other proprietors. In some cases also of collieries worked by ironmasters, the lease provides that if iron is quoted below a certain figure ten per cent. shall be deducted from the royalty on coal, and if iron rises above a certain figure ten per cent. shall be added. Considering the varia-

tion in royalties between pit and pit, though adjacent to each other and working the same seams, it would tend to avoid many expensive controversies if an equitable arrangement of this kind were generally adopted, and would furnish a fair basis for rating without further investigation of the particular concern. Ordinarily the whole history of the colliery comes under consideration, because each yields a fixed royalty, which may be too high or too low, and varies from pit to pit. For example, in the valley of Aberdare there are royalties of 6*d.*, of 7*d.*, of 9*d.*, of 10*d.*, and so on, which are fixed with reference to the depth of the seam to be won, the distance from the port of Cardiff, and other circumstances. It may interest the reader, and affords a striking illustration of the arbitrary system of valuation to which professional men are driven when they are engaged to readjust a royalty for the purpose of rating, if a sketch is here inserted of an actual calculation which was offered in evidence upon an appeal. The valuer *assumed* that a certain seam of coal, lying at a certain distance from a port, was worth 1*s.* 9*d.* per ton if reached by a level. If it was reached by a pit he deducted 3*d.* for that extra expense. He also deducted $\frac{1}{4}d.$ for so much of it as lay to the deep, and for extra haulage to the shaft $\frac{7}{8}$ of 1*d.* He made a further allowance for faults and water of $\frac{1}{2}d.$ These items amounted to 4*3*/₈*d.* to be deducted from his assumed standard of 1*s.* 9*d.*, which gave a royalty of 1*s.* 4*5*/₈*d.* This sum was taken as the true valuation, the actual royalty between lessor and lessee being 7*d.* The court to which evidence of this kind is offered is,

of course, in perfect ignorance of the details of such estimates, and receives them on the credit of the witnesses. There is a tendency to augmentation on one side and to diminution on the other, and the court is commonly induced to take refuge in a compromise between the two. Considering that it has been clearly shown that *the landlord's share* of the profits of occupation is the true value for rating, the expediency of entering into this bottomless sea of opinion and estimate may well be doubted. It may be argued that without the aid of this method of readjusting the royalties, the other ratepayers would not get a fair contribution from the collieries of the parish, and the workers of coal would get off too easily. But to such an argument the answer is sufficient that in fact the case is an exceptional one; that the property itself is daily vanishing away; and that it is fairly open to argument whether some deduction ought not to be made in respect of the destruction of the corpus from whence the profit comes. It was stated by Mr. Lumley to the committee that "some consideration ought to be given to that point," though he added it was not easy to deal with it. At all events the annual exhaustion of the estate itself is so peculiar a feature in this question, and royalty is so inconsistent with the ordinary notion of rent, that there is very strong reason to believe that the actual payments by lessee to lessor would be the fairest measure of rateable value. In expressing this opinion it is, of course, assumed that there is a *bonâ fide* bargain, and no ground for suspecting it to be otherwise.

Lastly, the rateability of rights of way (known by

the term "way-leaves," and "out-strokes," in different districts) remains to be considered. It was decided by the case of *R. v. Jolliffe* (2 T. R. 90), that the lessee of a right of way over the land of another, paying for it so much per ton for the goods carried over it, is not rateable as an occupier ; such way-leave being a bare right of passage (which is an easement, and not a grant of the profits of the land) is not rateable for such a right. For a mere easement is not rateable, the land having been before rated in the hands of the occupier of that land. But this case is distinguishable from that of *R. v. Bell* (7 T. R. 598). There the Dean and Chapter of Durham had leased lands, reserving to themselves the right of granting waggon ways over the lands so leased. They then leased certain waggon-ways to the appellants, making satisfaction to the original lessees for spoil of ground, according to the terms of the original lease. They constructed the ways, and prevented all persons, except such as were authorized by themselves, from using these ways ; they built bridges, &c., and erected gates, which they locked, and opened only when their waggons were travelling. The ground through which the ways were made was let to tenants who received an annual compensation from the appellants, who were rated in amount as they were before the ways were made. Lord Kenyon, in giving judgment, said, *inter alia*, "The question here is whether the appellants are or are not possessed of property that is rateable to the poor, and on that point there can be no doubt. One ground of argument is that because the Dean and Chapter could only grant a way-leave

therefore nothing more than a way-leave passed to the defendants ; but we are not to inquire into the titles of the occupiers. If a disseisor obtain possession of land, he is rateable as the occupier of it. Without going through the different parts of the case which show an occupation of the ground by the defendants, it is sufficient to say generally that they clearly *appear* to be the occupiers. And Mr. Justice Grose said, "It is impossible to read this case without seeing that the defendants have the exclusive possession of this ground."

The general rule is clear, that no person can be an occupier unless he has the exclusive right to enjoy some portion of the soil. The grant of an easement such as a right of way, a right of common, or the privilege, not being exclusive, of taking stone from a quarry, does not constitute the grantee an occupier. In all such cases the person in possession of the land is deemed to be the occupier, and rateable, and liable to be rated for the value of the land as increased by the use of it.

But though no person can be rated as the occupier of an incorporeal hereditament, such as a right of way, yet when any interest in the land has passed to the lessees, which may give them a right to the exclusive occupation of any land in *connection* with the incorporeal right, then such lessees may be legally rated in respect thereof.

If such way-leaves run over different parishes, the principle of rating may be gathered from the railway decisions. It is settled that the proper mode is to ascertain the rateable value of the land occupied by

the railway in each parish by the ordinary rules of assessment. The rateable value of any part in any parish must be taken from the net earnings in that parish, ascertained by a comparison of the profits and outgoings arising in that parish, and not with reference to the whole railway as one concern, and by division among the parishes according to the distance traversed in each. But any expenses, *wherever* arising, which are necessary for maintaining the property in any parish at the rateable value, may be taken into account.

The overseers are to collect the rate from the persons rated. If a person do not pay when called upon, the overseers may obtain a summons from a justice of the peace requiring him to show cause why a warrant should not issue to levy the rate by distress and sale of his goods, and if no sufficient cause is shown the payment is enforced accordingly. The party summoned may show for cause that the rate itself is void, or that he is not liable. He may also appeal against the rate, and notice of appeal deprives the justices of their jurisdiction to distrain until the appeal is decided, unless the objection is solely on the ground of overcharge, in which case the warrant may issue for such a sum as the property was rated at in the last valid rate. The appeal against the rate on the ground of inequality, unfairness, or incorrectness in the valuation, may be to justices in Petty Sessions, from whose decision an appeal lies to Quarter Sessions. The appeal on these grounds may also be taken to the Quarter Sessions in the first instance. If the objection be to the principle of the

rate itself, or the liability of the property to the rate disputed, the appeal lies to the Quarter Sessions only. In all these cases, notice of appeal and of the objections must be given to the parish officers, and to any rated inhabitant who may be interested, as, for instance, where his ground of appeal is that they have been underrated.

CHAP. XII.

INJURIES FROM MINING.

INJURIES to property arising from the excavations usually made in getting coal are common and various. The owner of the surface has a right to the support of the underlying strata, so that the owner of the sub-soil and the minerals cannot lawfully remove them without leaving sufficient support to maintain the surface in its natural state. When the possession of the surface is in one man, and the subsoil in another, by separate grants, each proprietor has a separate and distinct freehold or close. Consequently, if the owner of the surface digs holes in the surface to a greater extent than is necessary for the fair and proper enjoyment and cultivation of the surface, an action will lie against him. And on the other hand, reciprocally, if the owner of the subsoil carries on his mining operations so as to interfere with the fair use and enjoyment of the surface, the owner of the latter may sue him for damages. These are rights founded upon natural justice. If land not granted expressly for building purposes is loaded with buildings, the owner of the surface has no right to the additional support necessary to maintain those buildings until he has

acquired the right by grant or prescription. Thus if the owner of the subsoil, in working coal, leaves sufficient support for the surface, but the land sinks in consequence of the weight of the buildings upon it, the coal owner is not responsible for the damage done. But if the weight of the buildings has not caused the sinking of the land, and the land would have fallen in whether the buildings had been erected or not, the building on the land becomes immaterial, and the defendant is responsible in damages to the extent of the injury done both to houses and land. These propositions are well illustrated by the case of *Humphries v. Brogden* (20 Law Journ. N. S., Q. B. 10). It appeared that the surface belonged to the plaintiff, and the minerals to the defendants, the Durham County Coal Company. No evidence of title appeared to regulate or qualify their rights of enjoyment, and under these circumstances it was held that the owner of the surface-close, while unencumbered with buildings, and in its natural state, is entitled to have it supported by the subjacent mineral strata, and if the surface subsides and is injured by the removal of these strata, although the operation of removal may not have been conducted negligently, nor contrary to the custom of the country, the owner of the surface may maintain an action against the owner of the minerals for the damage sustained by the subsidence.

In delivering the judgment of the Court of Queen's Bench, Lord Campbell said that "the jury had found that the company had worked carefully, and according to the custom of the country, but without leaving sufficient pillars or supports. We have to consider,

when the surface of land belongs to one man, and the minerals belong to another (no evidence of title appearing to regulate or qualify their rights of enjoyment), whether the owner of the minerals may remove them without leaving support sufficient to maintain the surface in its natural state. The case is relieved from the consideration how far the rights and liabilities of owners of adjoining tenements are affected by the erection of buildings, for the plaintiff claims no greater degree of support for his lands than they must have required and enjoyed since the globe subsisted in its present form. We are of opinion that the owner of the surface, unencumbered by buildings, and in its natural state, is entitled to have it supported by the subjacent mineral strata. These strata may of course be removed by the owner of them, so that a sufficient support for the surface is left. Unless the surface-close be entitled to this support from the close underneath, corresponding to the lateral support to which it is entitled from the adjoining surface-close, it cannot be securely enjoyed as property, and under certain circumstances, as where the minerals approach the surface, and are of great thickness, it might be entirely destroyed. We likewise think that the rule, giving the right of support to the surface upon the minerals (in the absence of any express grant, reservation, or covenant), must be laid down generally, without reference to the nature of the strata, or the difficulty of propping up the surface, or the comparative value of the surface and the minerals."

To what extent the subjacent support must extend

is a question which in each case will depend on its own special circumstances. If the surface of the land is a common meadow or a ploughed field, the necessity for support will be much less than if it were covered with buildings. All that can be expected is such a measure of support as is necessary for the land in its condition at the time of the grant, or to enable the grantee to use it for purposes for which it was known to be required. If a man grants a meadow to another, retaining the minerals under it, he is bound so to work his mines as not to cause the meadow to sink. But if the person to whom that meadow is granted thinks fit to build a house upon it afterwards, he has no right to complain of the workings and excavations, if, by reason of the additional weight he has put on the surface, they cause his house to fall. On the other hand, if the grant is made expressly to enable the grantee to build on the land granted, then there is an implied undertaking and grant of subjacent support, just as if the house had already existed.

And though it is well established that the owner of land is entitled to have it supported by the neighbouring land where no building is placed on it, yet it was doubted by Lord Hatherley, when Vice-Chancellor, in the recent case of *Hunt v. Peake* (29 Law Journ. Chancery, 785), whether the owner of an ancient house is entitled to have it supported by his neighbour's land. But in that of *Hamer v. Knowles* (30 Law Journ. Ex. 102), it was held that the right of lateral support, *even through intermediate lands*,

extended to buildings erected within 20 years, provided *their weight* was found not to contribute to the subsidence.

The learning upon this subject is collected and embodied in the leading case of *Bonomi v. Backhouse*,* of which the following is an epitome and extract.

The plaintiff sued as owner of the reversion of some messuages and buildings, alleging that he was entitled to have them supported by mines, earth, &c., under ground, contiguous, near to, and under them; and that the defendant worked his mines so negligently, without leaving proper support, that the buildings were damaged. The short facts were, that the plaintiff was the owner of certain surface, and of an ancient house and buildings upon it. The defendant had worked a certain mine and left proper supports; but he afterwards worked another mine, 280 yards from the plaintiff's property, in such a way that the roof of the mine and surface of the land fell in, and caused a "thrust," which extended through the intervening working to those under the plaintiff's premises, causing the surface to subside so as to damage the foundations and walls of his buildings. The working which caused the thrust was more than six years before the action was commenced, but the actual damage to the buildings did not take place till within six years from the time the action was brought. In the judgment of the Court of Exchequer

* *Bonomi v. Backhouse*, 27 Law Journ.-Q. B. 387; 33 Law T. R. 333.

Chamber, delivered by Mr. Justice Willes, he said, "The right to the support of lands and buildings stands on a different footing to the mode of enjoyment ; the former being *prima facie* a right of property analogous to a right to the flow of a natural river ; while the latter, that is, the right to the support of houses, must be founded upon prescription or grant, express or implied. The character of the right when accrued is in each case the same. The question in this case depends upon what is the character of the right, namely, whether the support must be afforded by the neighbouring soil itself, or such a portion of it as would be beyond all question sufficient for present and future support, or whether it is competent for the owner to abstract minerals without liability to an action, unless and until *actual damage* is thereby caused to his neighbour. The most ordinary case of withdrawal of support is in town property, where persons buy small pieces of land, frequently by the yard or foot, and occupy the whole of it with buildings. They generally excavate for sewers ; in all cases for foundations ; and in lieu of the support given to their neighbour's land by the natural soil, they substitute a wall. We are not aware that it has ever been considered that a mere excavation of land for such a purpose gives a right of action to an adjoining owner ; it was itself a lawful act, though it is certain that if damage ensues in such a case a right of action accrues. So, also, we are not aware that until the case of *Nicklin v. Williams*, it has ever been supposed that getting coal or minerals, to whatever extent, in a man's own land,

was an unlawful act. If he did damage to his neighbour he was undoubtedly responsible; and a right of action was supposed to arise from the damage and not from the act of the man on his own land. The law favours the exercise of dominion by a man on his own land who is using it for a most beneficial purpose to himself. As we have already said, the defendant's proposition is that the adjoining owner is entitled to have the adjacent land remain in its natural condition. He does not and cannot contend that an artificial substitute would prevent a cause of action. There is no doubt that for the breach of a right an action lies, and the question is, what is the plaintiff's right? Is it that his land should remain in its natural condition unaffected by any act done in the neighbourhood? Or is it that nothing should be done in the neighbouring land from which a jury would find that damage might possibly accrue? There is no doubt that in certain cases actions may be maintained though there is no actual damage. The rule laid down by Mr. Serjeant Williams in *Mellor v. Spateman* (1 Saund. 346) is that, wherever any act injures another's right, and would be evidence in future in favour of the wrong-doer, an action may be maintained for the invasion of the right, without proof of any specific damage. This is a reasonable rule, but has no application to the present case. For the act of the defendant in getting coal would be no evidence in his favour as to any future act. The getting of coal was an act done by him in his own soil by virtue of his dominion over it. . . . We are not insensible to the observation, that to hold damage to be an

essential cause of action may extend the time during which parties are working the minerals ; but on principle we think the right which a man has to enjoy his own land in the state and condition in which nature has placed it, also to use it in such a manner as he thinks fit, is subject always to this, that if his mode of using it does damage to his neighbour he must compensate that neighbour. Applying these principles to the present case, we think no cause of action accrued for the mere excavation by the defendant in his own land so long as he caused no damage to the plaintiff, and that a cause of action did accrue when the actual damage first occurred. We should be unwilling to rest our judgment upon mere grounds of policy, but we cannot help observing that the rule of law, or rather the application of the statute of limitations, which would deprive a man of redress after the expiration of six years when the actual cause of damage was unknown to him, when in very many instances he would be in inevitable ignorance of it, would be harsh, and contrary to the ordinary principles of law."

It seems, therefore, now, that if the owner of the subsoil excavates it without leaving proper support for the benefit of the owner of the surface, the latter has no right of action until some actual damage has been sustained by him. In the earlier case of *Nicklin v. Williams* (23 Law Journ. Ex. 335), it had been held that the withdrawal of any part of the stratum, to the support of which the owner of the adjacent land, or a house thereon, is entitled, gave a cause of action, as an injury to the right, although no damage

had ensued, notwithstanding the obvious difficulty of proving that the essential part of the support *really* *was* withdrawn, in the absence of some actual effect on the land or the structure upon it.

But the case of *Bonomi v. Backhouse*, just before cited, is a commentary upon *Nicklin v. Williams*, and distinctly overrules it.

Upon the whole, the right of support from adjoining lands may be stated thus. Every owner of land is entitled of common right to such an amount of support from the land adjoining as is necessary to keep his own soil in its natural and ordinary state. If, however, the owner has loaded and burdened it with buildings it is otherwise. In that case he is not entitled of common right to the *extra support* from his neighbour's soil which may be required to keep up his buildings. He cannot, by thus artificially burdening his land and altering its natural condition, deprive his neighbour of the privilege of doing with his land what he might have done before. But he may acquire a right by grant or prescription to this extra support, and sue for damages for an infringement of it. This was the case in *Bonomi v. Backhouse*, where the buildings alleged to be injured by the excavations in the adjoining land were *ancient* buildings, and were, therefore, entitled to an extra and peculiar support; in fact, to so much support as was necessary to maintain them. This proposition may also be collected from the following decision, and some further light is thrown upon the claim to support.

In the case of *Brown v. Robins* (28 Law Journ. Ex. 250), the plaintiff's house was built, more than

twenty years before, upon land under which coal had been worked, according to the custom of the country, with ribs and pillars left as supports. The defendant knowing this, worked his coal mines under land adjacent, but not immediately adjoining, so as to cause the soil intervening to give way, and thus to cause the soil under the foundation of the plaintiff's house also to give way. It was held that the defendant was liable, and it would seem from this case that a house after twenty years acquires a right to the lateral support of the soil around it. Lord Chief Baron Pollock said, "If it were necessary (which it is not) to decide whether the plaintiff was entitled to the support for the house, as a house, we should be disposed to hold, especially as it is above twenty years old, that he was entitled to the support of the surrounding ground. But when the jury found that the injury was not occasioned by the weight of the building, the existence of the house on the land was immaterial. The plaintiff complains of injury to the land, the fall of the house being rather matter of damage. And if the defendant knew that the land there had been so weakened by undermining on the east side, that there was greater danger in working on the west side than there would otherwise have been, then he ought not to have dug there so as to throw the plaintiff's land down. And, having done so, he is responsible for the injury."

When houses or buildings have been obviously supported by the adjoining land or buildings of a neighbouring owner, or the owner of the subsoil, for the full period of *twenty years*, a prescriptive right to

such support is gained, unless something is proved to displace such right. A defendant who has acquiesced for more than twenty years in the enjoyment by the plaintiff of lateral support from the defendant's adjoining soil or building, cannot afterwards lawfully interrupt the enjoyment of that privilege. *But the adjoining owner must have known, or had the means of knowing, that the house in question was so supported, and have acquiesced in the enjoyment of that advantage.** Mr. Baron Bramwell has laid it down in the case of *Solomon v. The Vintners' Company*,† that “supposing a claim to exist as a matter of absolute right, or supposing it to exist as a matter of prescription, or under the Prescription Act, or as founded on some supposed lost grant ; in any of these cases it can only exist if the benefit claimed was one that was enjoyed *as of right*. Now a thing cannot be enjoyed as of right unless it is enjoyed *openly* and *visibly*. An enjoyment must neither be in *precario* nor *clam*—(dubious nor secret), it must be open.” Unless therefore there is that which is called “adverse enjoyment,” which means an open enjoyment or exercise of a right, as distinguished from an ambiguous, permissive, or concealed enjoyment, no title will be gained by prescription to any special rights. Therefore a grant ought not to be inferred from any lapse of time short of twenty years after the neighbour was, or *ought to have been*, fully aware of the facts. The easement must have been enjoyed for twenty years

* *Brown v. Windsor*, 1 Cromp. & Jer. 27.

† *Solomon v. Vintners' Co.*, 33 Law T. 224.

under a claim of right; and "if neither party was acquainted with the fact that the easement was actually used at all, we should probably," observes Baron Alderson, "be of opinion that there was no user of the easement under a claim of right."*

With regard to the right to the support from the subjacent strata for the surface of common lands which have been inclosed by virtue of Acts of Parliament, it is probable that the 22 & 23 Vict. c. xlvi. (previously referred to) will for the most part prevent disputes for the future, from the exercise of mining rights in such lands. But it may be convenient to refer to some cases decided upon disputed rights in lands inclosed prior to the passing of that Act. In the recent case of *Roberts v. Haines* (25 Law Journ. Q. B. 353), it appeared that an Inclosure Act had given power to allot the common and waste lands in a manor. It enacted that it should be lawful for the lord to come upon the common and waste, to search for and get coals, making compensation to any person whose allotment should be damaged. It was held that notwithstanding this power, the lord had no right so to work the coals as to destroy the support of the surface. Lord Campbell said, "Before the Inclosure Act, both surface and minerals belonged to the lord, but he agrees to that statute, and thereby to the alienation of the surface to the allottees, who are thus put in the same situation as if this had been part of the ancient enclosed land of the manor, and the lord had alienated it, in which case the alienee

* See *Partridge v. Scott*, 3 M. & W. 230.

would have had all the rights of an owner of land at common law. That being so, according to *Humphries v. Brogden*, the owner of the surface is entitled to the support of the subjacent minerals, and if the owner of the subjacent strata, working ever so carefully, according to the custom of the country, does injury to the surface, by making it subside, he is liable to an action. We have, therefore, to see whether any special power is given by this statute to the lord in this respect. According to one way of reading the Act, there would be a right for him to get the minerals anywhere and at any distance or depth, so that he makes compensation for damage done. But by consent of counsel on both sides, it seems agreed that the compensation is confined to damage done *on the surface*. This, therefore, leaves the lord in other respects in the position of an ordinary owner of minerals, where the surface belongs to another, and he cannot, therefore, defend himself effectually against an action."

But in the case of *Rowbotham v. Wilson* (25 Law Journ. Q. B. 362, and 8 H. L. Cases, 348), where an Inclosure Act had been passed, and on the face of the award it was stipulated that the allottees of the minerals should have liberty to work the mines, and the allottees of the surface should have no claim for compensation for any consequent sinking of the surface, it was held that the owner of the surface took it as a separate tenement, with only a *qualified* right of support from the minerals, and that he could have maintained no action against the allottee for working them in a careful manner. Houses had been erected upon the surface, and it was contended that as they

had stood thereon for more than twenty years before the subsidence complained of, a right of support to them had at all events been acquired. But Lord Campbell observed that "it would be strange if the owner of the minerals, who might work them although the surface in its natural state might be injured by subsidence, could be prevented doing so by the owner of the surface erecting upon it houses which he, the owner of the minerals, could in no way disturb. We are clearly of opinion that there is no evidence from which a lost grant from the owner of the minerals to the owner of the surface can be lawfully presumed, and that there is no evidence of enjoyment *as of right* from which the easement can be claimed under Lord Tenterden's Act."

It has been laid down in the case of *Hilton v. Lord Granville* (13 Law Journ. Q. B. 193), that a custom or prescription by which a manorial right to work mines without compensation for injury is invalid. But this is doubted by a learned author, who thinks that such a custom, though difficult to prove, must, if proved, prevail. For as the right to withhold support without compensation may be the subject of *grant*, so it seems to follow that it may be established by *prescription*.

The provisions of the Act 22 & 23 Vict. c. xlvi. will be found in another part of this work, and are very important to all persons interested in mineral property under inclosed lands.

CHAP. XIII.

INUNDATIONS AND BARRIERS.

ONE of the great difficulties of coal mining is water. "In the sinkings at the Great Hetton Colliery, in the county of Durham," says a recent author, "three principal springs or feeders were met with. The term 'feeder' is very expressive, and intimates that the out-flow of the water is constantly fed from some unseen source. Of these feeders, the first issued 2,000 gallons of water per minute ; the second, 1,000 gallons ; the third, 1,600 gallons per minute. It is generally supposed that these waters are originally derived from the surface, that is, from rains and floods percolating through the superficial beds of earth and soil. Frequent inundations are caused by accumulations of water in adjoining mines. The custom of leaving solid masses of coal, as barriers between adjoining workings, arose from this difficulty. But the negligent manner of working, or the cutting away of too much or the whole of the barrier, or the wrongful working of an adjoining mine, gives rise to disputes and to lawsuits."

"The law relating to this subject," says Mr. Bainbridge, "seems to be sufficiently simple and rational.

It is founded on the natural assumption that water is the common enemy, which, whether open or concealed, each owner must combat for himself ; and upon another different but consistent principle, that each owner has the full right to extract the greatest possible benefit from his property ; and that if in so doing he injure his neighbour he will not be liable to action, if his acts spring from no malice or mischief, and are simply consistent with a reasonable exercise of his own rights. For he ought not to be held responsible for the negligence of a neighbour who might have protected himself. The custom prevailing in most mining districts is conformable to this law. The mine owner works to the very end of his boundary on the dip of the beds, and leaves a barrier of his own mineral on the rise. Each owner thus fares alike, and each is, or ought to be, independent of the other."* There is here no question of easement. It is a matter depending entirely upon the admitted rights of property. If an upper owner trespasses upon the barrier of a lower owner, the former will be liable for the consequential damage, as well as for the trespass itself.

The leading cases upon this subject are the following. In the case of *Clegg v. Dearden* (17 Law Journ. Q. B. 233), the plaintiffs were in possession of a colliery in Staffordshire from 1830 to the commencement of the suit. The defendant had worked an adjoining colliery, on the rise, previously to the demise, had trespassed into the other lower coal-mine, and had

* *Bainbridge on Mines*, 426.

made some excavations and openings in the coal of that mine, by means of which the roof of those excavations fell in, and the interstice became filled with water. Afterwards the plaintiffs worked within a few yards of their boundary, where they found these waters which flooded their mine. These trespasses were previously unknown to the plaintiffs. The defendant had ceased to work his own coal, and to pump out the water. It was found by the special verdict that the distance left by the plaintiffs would have been a sufficient barrier, if the defendant had not trespassed wrongfully. In 1841 an action on the case was brought against the defendant for those trespasses, which was referred to an arbitrator, and substantial damages awarded. Afterwards another action was brought against the defendant for not closing the barrier. But it was held by the Court of Queen's Bench that the action could not be maintained. Lord Denman in giving judgment said there was a legal obligation to discontinue a trespass, or remove a nuisance, but no such obligation upon a trespasser to replace what he had pulled down or destroyed on the land of another, though he was liable in an action of trespass to make compensation in damages for the loss sustained. The defendant having made an excavation and aperture in the plaintiff's land, was liable to an action of trespass; but no cause of action arose from his omitting to re-enter the plaintiff's land to fill up the excavation. Such an omission was neither a continuation of a trespass, nor of a nuisance, nor the breach of any legal duty. The flowing of the water and the damage

were merely consequential, for which compensation had been made."

The case of *Smith and others v. Kenrick* (18 Law Journ. C. P. 172) is also a valuable leading case upon this subject.

The plaintiffs and defendant occupied adjoining collieries. A predecessor of the defendant, but with whom he had no privity, committed a trespass and made holes, called thyrlings, in a barrier of coal belonging to the plaintiffs, which separated the two collieries. It was a vertical seam or vein of coal, the property of the plaintiffs and part of their colliery, and this seam or vein formed a barrier between the chambers which had been excavated in the defendant's colliery and the chambers in that of the plaintiffs. In the beginning of 1844 the then owners of the adjoining colliery made three holes in and through this barrier. The defendant afterwards became the occupier of that colliery without any privity either of contract or estate between him and his predecessors who had so made these holes. When the defendant became the occupier there was a large subterraneous body of water in the Avon Eitha (that is, the defendant's colliery), which communicated with and was fed by springs in the neighbourhood. This body of water was on a higher level than the chambers of Avon Eitha, and separated from them by a horizontal bar of coal which was part of Avon Eitha Colliery. The chambers of Avon Eitha were on a higher level than the holes above mentioned, and the holes were on a higher level than the chambers of Plas Bennion, that is, the plaintiffs' colliery. The

effect of removing the horizontal bar of coal in Avon Eitha would be that the water above mentioned would of itself flow into the chambers of Avon Eitha, and that a large portion of such water would also flow on of itself from the chambers of Avon Eitha, through holes or thyrlings, into the chambers of Plas Bennion.

The defendant, during his occupation before the month of June 1845, knowing that these holes were then open into Plas Bennion, and that the effect of removing the horizontal bar of coal would be as above stated, nevertheless did remove it in order to get the coal and work his mine in the manner most advantageous to himself. In consequence of the removal the water flowed of itself into the chambers of Avon Eitha. One portion of the water flowed on of itself, thence through the thyrlings or holes into the chambers of Plas Bennion. Another portion of it would have flowed down to the bottom of Avon Eitha and below the holes, had it not been obstructed in its natural course by a dam which the defendant had placed in Avon Eitha, and it was thus turned into the chambers of Plas Bennion. This dam was removed by workmen of the Plas Bennion Colliery before the commencement of the action. The defendant contended that the action was not maintainable, as the defendant, in getting the coal from his own mine, as stated, had not done any act from which it was his duty to refrain.

The plaintiffs contended that it was the duty of the defendant to refrain from cutting through the bar of coal in his own mine, under all the circumstances of the case.

Other points were also made on each side; but they do not affect the general principle which governs the rights of adjoining owners of coal strata. The judgment of the Court of Common Pleas was delivered on the 14th of February 1849, by Mr. Justice Cresswell. He said: "The claim of the plaintiff to compensation is advanced on two grounds: first, on a supposed duty on the defendant, arising out of the act of Evan Jones (his predecessor in the occupation) in removing the plaintiff's barrier of coal when he occupied Avon Eitha, and the subsequent occupation of the same colliery by the defendant; and, secondly, on a general liability, said to be imposed by law upon the defendant, to be responsible for the injury done to an adjoining colliery by water casually introduced into his own in the course of working it. As to the first point, it is to be observed that there was no privity of any kind between Evan Jones and the defendant. The act done by Jones, of which complaint is made, was done not upon the premises now occupied by the defendant, but upon those of the plaintiff; nor does the defendant derive his title to the premises he occupies from Jones. There was no privity of estate or contract between Jones and the defendant. . . . If Jones had done anything in Avon Eitha Colliery which made his premises in their then state a *nuisance* to the plaintiff's colliery, the defendant, as occupier, might have been made responsible for continuing them in that state, as for upholding the nuisance. The act done by Jones to the injury of the plaintiff's mine was on the plaintiff's soil, where the defendant would have no right to go, even

if he wished it, for the purpose of remedying the evil that Jones had done. We think, therefore, that no special duty to protect the plaintiff's mine against water in the defendant's mine attached to the latter, in consequence of Jones having removed the plaintiff's barrier of coal when he occupied Avon Eitha, and of his (the defendant's) having succeeded him in such occupation.

“The next ground upon which it was contended that the defendant was liable in this action, is much broader, namely, that he was of common right bound to prevent the water coming into his own mine from flowing into his neighbour's. It is material to remember that in the case it is stated that the defendant worked out the coal which protected his own mine from the subterranean body of water, for the purpose of obtaining the coal, and so working his mine in the manner most beneficial to himself. There is nothing from which we can infer that it was an unusual or negligent mode of proceeding, or that it was done with any design to injure his neighbour's mine.” He then proceeded to examine several cases which had been quoted in the argument, and to distinguish them from the present. He referred to the case of *Haward v. Bankes* (2 Burr. 1113), observing upon it that “there can be no doubt that a man *may cause* water to flow from his own premises into his neighbour's, so as to make himself liable to an action —for instance, by erecting a mound or other work to give it that direction, as appears to have been done by the present defendant before a former action was commenced, and in which he paid money into court

as compensation. In this case it ought not to be said that he *caused*, but that he *permitted*, the water to flow into the plaintiff's mine. Treating the question as a new one, not governed by any decided case, it would seem to be the natural right of each of the owners of two adjoining collieries, neither being subject to any servitude to the other, to work his own in the manner most convenient and beneficial to himself, although the natural consequence may be that some prejudice will accrue to the owner of the adjoining mine, so long as that does not arise from the negligent or malicious conduct of the party. In the present case it could not be disputed that, but for the excavation of the plaintiff's coal, the defendant would have been entitled to work out the whole of his own coal; for if the space which it had occupied became afterwards filled with water, that would have done no harm to the plaintiff, if his coal also had not been excavated; and if he afterwards excavated his own, and the water flowed in from the defendant's workings, he would not on that account have any right of action for the damage done by it. Here the working of the two mines has been simultaneous. But the defendant's mine not being subject to any servitude, what authority is there for saying that the plaintiff, by working his coal, could alter or abridge the right of the defendant to work his own? Surely the reasonable thing is that the plaintiff should leave part of his own coal to protect his own workings against the influx of water. The plaintiff took that view of the matter, and left a barrier which would have been sufficient for the purpose,

but was broken through by a wrong-doer, for whose act the defendant is not responsible. There are many cases in which the principle has been recognized that one landowner cannot, by altering the condition of his land, deprive the owner of the adjoining land of the privilege of using his own as he might have done before. Thus he cannot, by building a house near the margin of his land, prevent his neighbour from excavating his own land, although it may endanger the house, unless, indeed, by lapse of time the adjoining land has become subject to a right analogous to what in the Roman law was called a servitude. So also in *Acton v. Blundell* (13 Law Journ. Ex. 289) the court held that one landowner having dug a well in his own land, could not maintain an action against a party who afterwards sunk a coal-pit in the neighbourhood, which had the effect of drawing the water away from his well ; the act not being done by the defendant maliciously or negligently, but in a proper manner for the purpose of winning his own coal. We think the same principle is applicable to the present case. The water is a sort of common enemy, against which each man must defend himself. And this is in accordance with the civil law, by which it was considered that *land on a lower level owed a natural servitude to that on a higher*, in respect of receiving, without claim to compensation, the water naturally flowing down to it.

“ Upon the whole we are of opinion that the plaintiff is not entitled to recover.”

Since the first edition was published the following case has occurred, which supplies further illustrations

of the principle above stated. In the case of Baird and others *v.* Williamson (33 Law Journ. C. P. 101), it was held that the owner of the upper of two adjoining collieries is not liable for injury done by water flowing by gravitation into the lower mine from works conducted by him in the usual and proper manner for the purpose of getting minerals from any part of his mine. But he must not interfere with such gravitation so as to make it more injurious to the lower mine or more advantageous to himself, for if he does so and be thereby an active agent in sending water to the lower mine, an action will lie against him by the owner of the lower mine for the injury it may occasion. The court endorsed the judgment in Small *v.* Kenrick, and the principle affirmed and developed is this, that the plaintiff as occupier of the lower mine *is subject to no servitude of receiving water conducted by man* from the higher mine. Each mine owner has all the rights of property in his mine, and amongst them the right to get all minerals, provided he works with skill in the usual manner, and if, while the occupier of the higher mine exercises that right, nature causes water to flow to a lower mine, he is not responsible for that operation of nature. If the owner of the lower mine intends to guard against this operation, he must leave a barrier at the upper part of his mine to bank back the water of his higher neighbour. This judgment was given upon demurrers raising the legal points, and was not the result of a trial by jury.

And the case of Rylands *v.* Fletcher, decided in the House of Lords in July 1858, is a valuable illustration

of the responsibility of persons who while using land, however carefully, in a non-natural or artificial way, cause damage to a neighbour. The facts were shortly as follows. The defendants were the owners of a mill and close of land, and the plaintiff was the occupier of a mine under an adjacent close. He had gradually pushed his mining operations till he came into contact with some old workings under the defendants' close, which had been connected with the surface by some vertical shafts, now filled up. Under these circumstances the defendants proceeded to make a reservoir of water on their close, and their engineer, not having noted the old shafts, allowed water to rush down them into the old workings, and from them into the plaintiff's mine. There was no dispute as to the plaintiff's right to work his coal up to the old workings. It was held that the owners of the reservoir were responsible for the damage done, and the Lord Chancellor adopted and confirmed the judgment of Mr. Justice Blackburn in the court below. That learned judge said, "We think the rule of law is, that the person who, for his own purposes, brings on his land and collects and keeps anything that is likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence if it escapes. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of *vis major*, or of the act of God. The general rule seems, on principle, just. The person whose grass is eaten down by the escaping cattle of his neighbour, or

whose mine is flooded by the water from his neighbour's reservoir, or whose habitation is made unhealthy by the noisome vapours of his neighbour's alkali works, is damnified without any fault of his own ; and it seems but just that the neighbour who has brought something on his own property (which was not naturally there) harmless to others, so long as it is confined to his own property, but which he knows will be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property." The distinction taken was between the natural user of land and the operation of the laws of nature, on one hand, and the non-natural use of it for the purpose of introducing something into it which in its natural condition was not in or on it.

These judgments treat this subject so clearly, and exhaust it so thoroughly, that the author will not venture to add any observations or comments of his own. He will only suggest that the principle which seems to lie at the root of the decisions is this, that a kind of servitude or liability attaches by the general law of nature and of property to land which lies on a lower level in its relation to that which is higher, to receive any water which comes or is let down upon it, provided it flows in the course which natural laws direct. If the occupier of the higher ground by any artificial means alters the course of the current he sends down, the servitude of the lower land will not compel the occupier to receive such a diverted flow. But, on the other hand, if the flow from the higher to the lower level be natural, the occupier below must

take measures to protect himself against the liabilities of his natural situation, and prevent the discharge of the water upon himself, which, if it found an outlet to him, would not generally, however injurious, create a right of action or be the ground of an injunction.

CHAP. XIV.

WORKING OUT OF BOUNDS.

THE working of coal beyond the limits to which the proprietor of the mine is entitled is sometimes a source of great mischief. It is not only the loss of the coal itself which may be involved, but the barrier left by the neighbouring miners may be broken through, and thus bring about calamitous results to life and property. The remedy for this injury is an action of trespass. In an action of trespass for taking away coal under such circumstances, the plaintiff is entitled to recover the value of the coal at the time of its severance from the soil, and the trespasser cannot claim any deduction therefrom in respect of the expense incurred by him in getting the coals, unless there is a fairly disputed title. This value is the selling price at the pit's mouth, after deducting the expense of carrying the coals from the place in the mine where they were got to the pit's mouth. The plaintiff is also entitled to compensation for all injury done to his soil by digging, if the approach be made from the surface by new excavations. The estimate of the loss from the removal of the coal depends upon the value of the coal at the time of its severance from the soil; and the defendant has no right to any deduction

in respect of royalty payable by the plaintiff to the mine owner on coals got from the mine.*

The recent case of *Hilton v. Woods* (Law Reports, Equity, 1867, p. 433) is an authority upon the question of compensation to the owner for coal improperly worked by the occupier of an adjoining mine. "It is clear," says Sir R. Malins, "that a different principle is applicable when the coal is taken inadvertently, or (as in the present case) in the *bonâ fide* belief of title, and when it is taken *fraudulently*, with full knowledge on the part of the taker that he is doing wrong, or, in other words, committing a robbery. In such cases it may be proper to apply the strict rule laid down in *Martin v. Porter* (5 M. & W. 351), which is, to charge the full value of the coal *without* allowing any of the expenses of getting it. But in cases where no such ingredients have existed, a milder rule has been applied." He afterwards stated that rule to mean, that the fair value of the coals should be given, *as if the coal field had been purchased from the plaintiff* at the fair market value of the district.

If the adjoining owner sinks a mine in his own land, and makes lateral excavations, trespassing upon the minerals of a lessee to whom that land has been demised generally, and in which the minerals are not yet worked, without disturbing the surface of the land, the lessee may maintain an action for the trespass to his possessory interest, and the lessor may maintain an action for the injury to his reversionary estate. If the surface and minerals have been severed

* *Martin v. Porter*, 5 M. & W. 352; *Wild v. Holt*, 9 M. & W. 672; *Addison on Torts*, 180.

in title, and become separate tenements, then the grantee or owner of the minerals is the only person entitled to sue in respect of trespasses upon them.*

In order to avoid this kind of trespass, and the expense and responsibility it involves, proper underground surveys ought to be constructed by competent surveyors, which serve to prevent such trespasses as are not wilful and intentional.

There is no difficulty in ascertaining by such surveys the precise position of the workings to a yard. Surveys and maps ought to be kept in the office of the colliery. And when this mode of self-protection is not attended to, the trespasser, even by accident, cannot justly complain if he is made to pay, by way of damages, the value of the coal at the pit's mouth, without being allowed to deduct the wages he may have paid for cutting it, and certain other expenses connected with raising it to the surface.

In the new case of *Davies v. Sheppard* (35 Law Journ. Chan. 531), the view of the Court of Chancery with respect to a mistake in quantity, and the expression "or thereabouts," may be found.

The mines under a farm of 181 acres were supposed to be divided by a fault running north and south in such a way as to leave about 83 acres on the west and 98 acres on the east; and the owners, by several agreements, agreed to demise to S. the mines lying to the westward of the fault, "supposed to be 83 acres or thereabouts," and to D. the mines lying to the east of the same fault, "supposed to 98 acres or there-

* *Keyse v. Powell*, 22 Law Journ. Q. B. 305.

abouts," and each lessee was to pay, in addition to a royalty, a dead rent amounting to about 2*l.* per acre on the estimated area of the mines demised to him. No lease was executed to either of the lessees, but they entered upon and commenced working the mines agreed to be demised to them respectively. S. in the course of his working arrived at a fault, which, if taken as the boundary between the mines agreed to be demised to him and those agreed to be demised to D., would leave him only eight acres instead of 83, and he worked through the fault. D. then filed a bill for an injunction to restrain him from so working, and one of the Vice-Chancellors granted the injunction ; but upon appeal this decision was reversed, the court being of opinion that, assuming the fault worked through by the defendant to be the same as the fault indicated in the agreement (which was not clear), the plaintiff was not entitled to a lease of mines so largely exceeding the estimated acreage of the mines agreed to be demised to him as the mines lying to the eastward of the fault, and he could not be considered as constructively in possession of more than the lessors had by their agreement bound themselves to demise.

In construing the words "or thereabouts," when used to qualify the statement of the estimated quantity of mines agreed to be demised, the same principles ought to be acted upon as would guide the court in construing the same words in an agreement for sale or demise of the surface.

In the case of *R. v. Hickman and others*, tried at Stafford, in March 1861, before Mr. Baron Wilde, an attempt was made to give a criminal character to

acts of this nature. The prosecutor was the occupier of a colliery, and the prisoners were in partnership, and occupied an adjoining colliery. This last had been partially worked out by other previous occupiers, but in 1857 the prisoners took a lease of it, and continued the works by taking out the ribs and pillars. In February 1860, the prosecutor, in consequence of suspicions, applied to the prisoners for leave to inspect their workings, which was refused. In July the prisoners, on being applied to by the prosecutor's solicitor, gave permission. It was then discovered that a brick wall had been made across a gate-road near the boundary of the two mines, in consequence, as the prisoners said, of the fire-damp, which made it impossible to work further in that direction. The prisoners refused to remove this dam. A mining engineer deposed that in 1859 he had informed the prisoners that they had carried the gate-road a little beyond their boundary, through the prosecutor's mine. Another witness, who had been in their employ early in 1860, proved that not only had this gate-road been carried about 100 yards through the prosecutor's mine, but that he had been told by the prisoners to get the coal on both sides of it. It was thick coal, and was about twenty yards in thickness, and this witness said that it had been taken by order of the prisoners, who superintended the under-ground work, to the extent sometimes of fifteen yards in width. It was after this that the dam was constructed, and the suggestion was made that the dam was for the purpose of concealing what had been done. The prosecutor admitted that

he himself had formerly been compelled to make compensation for coal which he said had been taken by his servants from an adjoining owner without his knowledge. Mr. Baron Wilde told the jury that they must be satisfied that the prisoners did not take the coal by mistake before they convicted them. The question whether it had been taken by mistake or wilfully, and with the felonious intent, would depend partly upon the extent to which the coal had been taken; and the circumstances under which it had been taken. The jury were to consider whether there was any good reason for putting up the dam, or for not taking it down; in which latter case, if no coal had been taken, it might have been clearly shown. He then referred to the evidence of the surveyors, and finally left it to the jury to say whether they were satisfied with the evidence of the witness who proved the working by order of the prisoners. The jury retired, and afterwards found a verdict that the prisoners had taken the prosecutor's coal, but did not do it wilfully.

The above report is from the assize intelligence in the *Times*; but their reports are remarkably accurate, and it is therefore inserted here to show that working out of bounds may sometimes be the subject of criminal as well as civil proceedings. The evidence must, however, be extremely strong and clear to justify proceedings of this nature.

The Statute of Limitations may be pleaded to actions of trespass for injuries of this kind. If the acts complained of took place more than six years before the commencement of the suit it will fail if the question is set up as a defence. Even fraud will not

prevent the operation of the statute. But while this statute greatly curtails the remedy in the common law courts, those of equity will hold that in cases of fraud the time begins to run from the discovery of the mischief, or from the time when, with due diligence, the discovery might have been made.* If, therefore, a bill is filed in a court of equity for an account of minerals wrongfully taken, the statute cannot be successfully pleaded if the injury has been first discovered within six years from the filing of the bill. It is in general very difficult to obtain evidence of intentional fraud. But when coal has been taken by working out of bounds there must have been either fraud or mistake. And a court of equity will give the same relief by decreeing an account in cases of mistake as well as of fraud.†

“The remedies for these trespasses,” says Mr. Bainbridge, “in whatever spirit they are committed, are very deficient. It is believed that there are few mining districts in England where a kind of legalized robbery does not take place. But they are often undiscovered till the statute permits the delinquents to escape.” The remedies suggested by that able writer are, first, that the legal remedy should begin only from the discovery of the abstraction of coal, when the parties seeking redress have not postponed the discovery by negligence. A second remedy might be given by larger facilities for inspection, and powers might be given for this purpose to the official inspectors of mines. A more complete remedy would be given by a proper registration of all mining operations.

* *Denis v. Shuckburgh*, 4 Young & C. 42.

† *Brooksbank v. Smith*, 2 Young & C. 58.

CHAP. XV.

COALS LYING UNDER RAILWAYS AND CANALS.

IN the case of a railway passing through a mineral district, it would have greatly added to the expenses of the undertaking if the company had been obliged to purchase the subjacent minerals, which they did not want, as well as the surface, which they did want. A provision, convenient and useful to all parties concerned, was introduced by the Legislature into the Railway Clauses Consolidation Act, 8 Vict. cap. xx., by which the property in the subjacent minerals is severed from that of the surface in the case of lands purchased for the purposes of a railway. The clauses which refer to such conveyances, and to the notice required to be given before working such minerals, and to the power reserved to railway companies of purchasing them, and the rights of the owner after notice, are as follows :—

§ 77. The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly

purchased ; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

§ 78. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working ; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose ; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines or any part thereof to such owner, lessee, or occupier thereof, then he shall not work or get the same ; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

§ 79. If, before the expiration of such thirty days, the company do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper

and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate, and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense ; and if such repair or removal be not forthwith done, or if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts.

§ 80. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water-levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines, but no such airway, headway, gateway, or water-level, shall be of greater dimensions or section than the prescribed dimensions and sections, and, where no dimensions shall be prescribed, not greater than eight feet wide and eight feet high ; nor

shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

§ 81. The company shall pay to the owner, lessee, or occupier of mines extending so as to lie on both sides of the railway such additional expenses and losses as shall be incurred by such owner, lessee, or occupier, by reason of the severance of the lands lying over such railway, or of the continuous working of such mines being interrupted, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway. If any dispute or question arise touching the amount of such losses or expenses, the same shall be settled by arbitration.

§ 82. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid, by reason of the making of any such airway or other work as aforesaid, which would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of such surface lands for the loss or damage so sustained.

§ 83. The company may, after giving twenty-four hours' notice in writing, enter upon any lands through or near which the railway passes wherein any such mines are being worked, or are supposed to be, and into any such mines or the works connected therewith,

and may make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, for the better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works.

§ 84. Any owner, lessee, or occupier of any such mine refusing to allow any person appointed by the company so to enter into and inspect such mines or works to forfeit to the company a sum not exceeding 20*l.*

§ 85. If any such mines have been worked contrary to the provisions of this or the special Act, the company may give notice to the owner, lessee, or occupier thereof to construct such works and adopt such means as may be necessary for making safe the railway and preventing injury thereto ; and if such owner, lessee, or occupier do not forthwith after such notice proceed to construct such works, the company may themselves construct them, and recover the expense by action in any of the superior courts.

On the subject of the relations that may be created by the 78th and 79th sections of the Railway Clauses Consolidation Act, as between a railway company and the owner of minerals underlying the railway, a question was lately mooted as to the sufficiency and effect of a notice given pursuant to the 78th section by the owner of the minerals to the company, and as to the right of support for the surface to which the vendors of land sold for the purpose of a railway would be entitled. It appears that the general common-law right of support for the surface which they might otherwise have possessed is qualified by the

power of working mines expressly reserved to the mine owner. And this, under the terms of section 79, is a power to do whatever is proper and necessary for beneficial working, limited only by the obligation to work in the manner usual in the district. The two sections 78 and 79 were considered in the late case of the Great Western Railway Company *v.* Fletcher, (of which a summary will be given,) and it was held that when taken in connection with each other, their effect was to free the mine owner, in the event of the company declining to compensate him, from liability in respect of damage done by works conducted in the usual manner. There was a series of prior decisions relating to canals to the same effect upon statutes similarly worded, namely, Wyrley Canal Company *v.* Bradley (7 East, 368), and Dudley Canal Company *v.* Grazebrook (1 B. & Ad. 59), and the Caledonian Canal Company *v.* Sprot (2 Macqueen's Rep. 449).

With respect to the general question of notice under section 78, it is obvious that the terms of that section are vague and general. Differences of opinion may easily arise as to the circumstances under which such a notice would be authorized, and as to the extent of area to be comprised in it. The difficulty will turn chiefly upon the effect to be given to the words "desirous of working the same."

On the one hand it may be said that the difficulty of ascertaining whether a mine owner was really desirous of working the minerals at the time of giving the notice, shows that the notice itself must be taken as conclusive evidence of a desire within the meaning

of the Act. It would probably be held that the notice contemplated by the 78th section is only authorized when there is a *bonâ fide intention*, as well as an actual ability, to work, within a reasonable time, some part of the minerals lying within the prescribed distance from the railway. It is, no doubt, a difficult matter to ascertain the reality of the desire or intention to work, but nevertheless it would seem to be a point which may properly be raised and entertained. As to what is a *reasonable time*, the Act seems to contemplate a readiness to work on the expiration of the thirty days, and although it may not be necessary to begin so soon, yet inability to do so, after the lapse of any lengthened period without working, would probably be considered as evidence from which the absence of a *bonâ fide* desire at the time of the notice might be presumed. With regard to the extent of the area to be comprised, the notice may be taken to extend both horizontally and vertically to all minerals expressly mentioned in it, which may be won or got by means of the same general system of workings by which the prescribed limit of forty yards is intended to be reached. It would seem that upon a notice being thus given, the railway company would be bound, once for all, to specify with reasonable certainty the particular part of the minerals for which they are willing to make compensation. It is questionable whether they are entitled to postpone their decision until the workings are further developed, or to require a fresh notice with every change in the workings, or when any fresh measure is entered upon, provided they are all part of one general system of workings.

The author is indebted for the elucidation of these points to his learned friend Mr. Archibald, who has had them under his careful consideration.

In the case of *Fletcher v. Great Western Railway Company* (28 Law Journal, Ex. 147), the railway company had purchased land for the purpose of their railway, by agreement, and having taken a conveyance in the form given in the Land Clauses Act, 8 & 9 Vict. c. xviii. schedule A., was not willing to purchase the minerals after notice of the owner's intention to work them, pursuant to sect. 78 of the Railway Clauses Act, 8 & 9 Vict. c. xx. It was held that the company under those circumstances were not entitled to the adjacent or subjacent support of the minerals, but that the owner is entitled to get them, although the getting such minerals should cause the surface to subside. Therefore, when the company had given notice that the working of the mines was likely to damage the works of the company, the owner of the minerals was held entitled to recover compensation, which had been assessed under sect. 78 of the 8 & 9 Vict. c. xviii. The Chief Baron said : "The construction of the clauses in the Act is clear, that unless the mines and minerals are expressly purchased, they shall be deemed to be excepted out of the conveyance. They were *not* so purchased. The conveyance is in the form given by the Act ; consequently the company have taken the land as if the mines and minerals were excepted. They belong, therefore, not to the company, who are owners of the surface, but to the owners of the *land*. The 78th section enacts that the mines near the railway shall

not be worked, if the company are willing to purchase them. In that respect it puts all the world on the same footing, whether they are grantors or strangers. But if the company are unwilling to purchase, then the owners may work them, which means, that if the company desire to exclude the owners from working the mines, they can, by taking the proper course, do so. If they do not, then they may go on working the mines without doing unnecessary damage."

This judgment has since been affirmed in the Court of Exchequer Chamber. Lord Chief Justice Cockburn said that the 77th and 78th clauses of the Railway Clauses Consolidation Act must be read together, and expressed himself in substance to the same effect as the Lord Chief Baron in the Court below.

In the case of the Great Western Railway Company *v.* Bennett, in the House of Lords (Law Reports, 1867, Appellate S. p. 27), it was held that by the effect of the 77th, 78th, and 79th clauses a railway company, on purchasing land for the railway, does not become entitled to the mines under the land: the owner may work them after notice duly given; and if, after such notice, the company, though desiring to prevent the working, does not give compensation for the minerals, the owner may work them up to and under the railway, working them in a "proper manner," and according to the usual manner of working such mines in the district. The company cannot under this statutory purchase claim the benefit of the right of an ordinary purchaser of the surface to subjacent and adjacent support, the statute having created

a specific law for such matters, by which alone the rights of the mine owner and the company are regulated. The Lord Chancellor said that the writ of error in this case was virtually brought upon the decision of the Court of Exchequer Chamber in Fletcher's case, as the present one was decided upon the authority of the former without argument.

It will be perceived that when the owner proceeds to work the minerals after the railway company have declined the option of purchase, the latter are not entitled to claim the usual common-law right to the support of the surface they occupy. But this is an exceptional case, and the rule seems to be grounded entirely upon the neglect on the part of the company of the equitable provisions of the statute. The opposite doctrine was upheld in the case of the Caledonian Railway Company *v.* Sprot, in the House of Lords (2 Macqueen, 449), where land had been conveyed to a railway company in Scotland for the purpose of the railway, prior to the Railway Clauses Consolidation Act. It was decided that such a conveyance gives a right by implication to all reasonable subjacent and adjacent support connected with the subject matter of the conveyance, and that, therefore, although in the conveyance the minerals are reserved, the grantor is not entitled to work them, even under his own land, in any manner calculated to endanger the railway. On the same principle, "if the owner of a house were to convey the upper story to a purchaser, reserving all below the upper story, such purchaser would on general principles have a right to prevent the owner of the lower stories from interfering

with the walls and beams upon which the upper story rests, so as to prevent them from affording proper support."

The distinction between this case and that of the previous one is this, that here the conveyance was not a conveyance under the statute, but an ordinary private assurance. "There is an obvious distinction," said Lord Chief Justice Cockburn, "between an ordinary purchaser and one who acquires the surface by a *compulsory* purchase, under the Land Clauses Consolidation Act, 1845," and upon this distinction the diversity of the decisions depends. Similar provisions have been inserted in various Acts of Parliament, incorporating canal companies, and enabling them to purchase lands for the formation of a canal. The effect of them is to deprive the company of the right to support for the railway or canal from coal, ironstone, slate, or minerals beneath the surface of the adjoining land, or beneath the land over which the railway or canal is carried, unless they have purchased the slate or minerals, or compensation has been given in the manner prescribed by the statute.

Under statutory provisions of this sort, the company do not in the first instance pay to the landowner more than the value of the surface in the shape of purchase money or for the injury to the surface, if only compensation is made for damage. The minerals remain the property of the owner of the soil. But where he is desirous of getting them, the company have the option of purchasing at a fair price, to be settled in case of dispute in the usual way. These provisions are for the benefit of the company, who

are relieved from the great expense of buying the minerals along the whole line of an intended railway or canal in the first instance, before it is constructed, and are enabled to postpone the purchase of them until the time when, from the state of the market in the neighbourhood, the owners really want to get them. When this happens, the company have an option either to buy, (in which case the landowner cannot get the minerals, but is fully compensated for the loss of that right,) or not to buy, in which case he receives no compensation at all, and his right to get them remains as complete as if no railway had been made.

In the case of canal companies, it has been held that clauses in Acts of Parliament requiring coal owners to give notice to the company of their intention to work their mines within a certain distance of the canal, and giving liberty to the company to inspect the works, and to prohibit the owners, upon compensation being made, from working within that distance, were framed for the purpose of enabling the company to purchase out the rights of the coal owners, if they thought their canal works likely to be endangered by the nearer approach of the miners; that if the company declined the purchase, the coal owners were left to their common-law rights, as if no canal had been made; and they might take every part of their coal in the same manner as they might have done before the Act passed; their former rights in that respect not having been taken away by the Act, which has only appropriated the surface of the land, and so much of the soil as was necessary for

the cutting and making of the canal, leaving the coal, &c., to the owners, to be enjoyed in the same manner as before.*

* *Wyrley Canal Co. v. Bradley*, 7 East, 371; *Addison on Torts*, 34.

CHAP. XVI.

ACCIDENTS IN COLLIERIES.

It is only necessary to read a few of the reports of the inspectors of mines to appreciate the importance of this subject. It has been stated by Mr. Dillwyn, M.P., that "the average of colliery accidents amounts to from 1,000 to 1,200 every year, a great majority of which are not connected with explosions, but with the falling of roofs, stones, and other causes which might be prevented to a certain extent by caution and good regulations." The causes pointed out by the inspectors are very various. "In many instances," says Mr. Higson, "accidents happen from the manager or overseer not being sufficiently skilful in his occupation. At collieries under the best management, accidents and loss of life are comparatively trifling in proportion to the number of persons employed and the annual out-put of coal. But many workmen," he adds, "are indifferent as to the means of their own safety, reckless, or, I should perhaps say, careless, as to the safety of others, and disobedient in obeying the special rules." Another inspector, speaking of a Staffordshire district, says, "The vast number of shafts there do not present much above

a dozen properly fitted up with guides and cages." Another says, "On examining into the accidents, I find that many of them have been occasioned by neglect and foolhardiness on the part of the sufferers: no doubt the great majority of accidents take place from want of consideration and forethought, both on the part of workmen and those engaged as overmen, in the varied and exciting details of underground management." Again, speaking of the death of an overman, he says, "I examined this colliery a day before this accident, and found one of the winding ropes a good deal worn. It had been cut and a clasp inserted. The rope broke at the clasp, and the overman lost his life by it." Again he says, "Underground workmen should be strongly impressed with the feeling that a mining occupation, even under the most favourable circumstances, is fraught with danger, and that *each man's safety, in a great measure, depends upon himself*. But men daily accustomed to danger are apt to neglect, or overlook, measures of a precautionary kind. In this district (that is, in a midland county) there is a want of skilful underground overmen."

From these reports it is manifest that a large proportion of accidents and deaths in mines occur to individuals whose own carelessness is the cause of their own injuries. Upon this class of accidents there is nothing further to say. But there are other accidents which are alleged to happen in consequence of the negligence, or ignorance, or rashness of the employer, or his agents or overmen, or of the fellow-workmen of the sufferers. The object of this chapter

is to state the legal rules which fix and define the responsibility for such accidents.

If the negligence or unskilfulness of the employer himself causes an injury to a person engaged in the business, the former is responsible for such consequences. It is also established, that a master is liable to third persons for any injury or damage done through the negligence or unskilfulness of a servant acting in his master's employ. The reason for this is, that every act which is done by a servant in the course of his duty is regarded as done by his master's orders, and, consequently, as the same as if it were the master's own act.

In illustration of this extensive liability of the employer for injuries caused by his negligence and want of care, may be cited a case tried in March 1861, at York, before Mr. Justice Keating. The plaintiff was a collier, and the defendants were owners of a colliery near Sheffield. The plaintiff was working down an upcast air-shaft, which was being used by the defendants as a drawing shaft. On the day in question he entered the cage at the bottom of the air-shaft for the purpose of being drawn up. He had ascended a few yards when a piece of bind stone becoming detached from the uncased side of the shaft fell upon the plaintiff's head and injured his skull. The ground upon which he based his claim against the owner was, that the air-shaft was not cased or lined throughout according to the Act 18 & 19 Vict. c. cviii., and also that the cage itself was defective, being without that safeguard called "a bonnet." It was suggested for the defence, that the

plaintiff's head had by his own carelessness come in contact with one of the stays in the shaft, and some evidence was offered in confirmation of this defence, but the jury found a verdict for the plaintiff; damages 150*l.* It is clear, however, that if the jury had believed the defence set up, their verdict must have been for the defendants. For, although the stay might have been the cause of mischief in the absence of proper precaution in the ascent or descent, the plaintiff was bound to use all necessary care and precaution to avoid a danger which was obvious and avoidable, and if he did not do so he could have no legal claim against the owners. This case, however, is entitled to no greater weight than that of a *nisi prius* verdict.*

The doctrine of the responsibility of the master for the acts of his servant was carried to a great length in the case of *R. v. Stephens* (35 Law J., Q. B. 251), which was an indictment for nuisance by injuring the navigation of the river Towey by throwing rubbish into it. The defendant was the owner of a colliery on the bank, and his men were competent to perform their duties, but nevertheless so stacked the rubbish that it caused the obstruction. The defendant was eighty years of age, did not personally superintend the works, and had given express orders to his workmen that the rubbish should not be thrown into the river. It was held that these facts formed no defence. The works were conducted for the defendant by his sons or some other agent, and for his benefit, and he must

* See a late case in the Appendix.

be considered to have given to his servants or agents all the authority that is incident to the carrying on the business. What they had done was within the scope of such authority, and the defendant was therefore liable. It is difficult, if not impossible, to reconcile this case with that of *R. v. Handley*, which is quoted in the chapter on the inspection of mines. There is, however, this difference, that in the case of the nuisance there was no reason to believe that the defendant was actually ignorant of the obstruction ; whereas in the case under the Mines Inspection Act, it was probable that the defendant had no knowledge of the illegal act.

A plaintiff cannot recover damages, if, but for his own negligence, the accident would not have happened, though there *was* negligence on the part of the defendant. For the plaintiff cannot complain of an injury which his own negligence and want of care *has contributed* to bring upon him.*

If a rule established for securing the safety of workmen in a dangerous employment is habitually violated, to the knowledge of the workman himself, the latter has no ground to recover damages from the employer for injuries sustained from the non-observance of the rule.†

But every master who employs servants or workmen to work upon his land or premises, is bound to take all reasonable precautions for their safety. If hidden and secret dangers exist upon his premises,

* *Martin v. Great Northern Railway Co.*, 16 C. B. 192.

† *Senior v. Ward*, 28 Law Journ., Q. B. 139.

known to him and unknown to his workmen, it is his duty to disclose them to the latter, that they may take precautions for their safety. If a master were to order a servant to take a lighted candle amongst packages known by him, but not known by the servant, to contain gunpowder, the master would be responsible for any injury sustained by the servant from the unknown danger and unexpected risk to which he had been exposed ; but not so if the servant accepted the employment knowing the risk he ran. For, as a general rule, the master is not responsible for the dangerous state of his premises, if those dangers are known to the servant, and he has taken upon himself the employment, knowing the attendant risk, and having an opportunity of guarding against them by his own care and vigilance.

If the negligence of the plaintiff himself, or his servants, has been the *immediate* cause of the injury of which he complains, he has no ground of action.

Every workman who undertakes a dangerous employment takes it with all its *ordinary* risks. The master is bound to provide for the safety of his servant in the course of his employment to the best of his judgment ; but the law does not impose upon the master the obligation of taking more care of the servant than he may be reasonably expected to take of himself. The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends danger to himself. But in most of the cases in which danger may be incurred, the servant is just as likely to know the extent and probability of it as the master.

The master therefore is not responsible for injuries sustained by a servant through dangerous machinery, with the use of which the servant professes to be acquainted, and which he has voluntarily undertaken to use.* By inference from these rules, it is presumed that the owner of a coal pit would not be responsible for injuries sustained by a collier from an explosion of gas, if the owner had adopted all the proper and recognized methods of ventilating the pit. But it would certainly be held that the owner was responsible if the collier, relying on the usual precautions, had descended to work, and in consequence of the neglect by the agent or overman of some customary precaution, an explosion took place whereby the collier was injured or killed.†

The master is bound to protect his servant from concealed dangers on the master's premises, known to the master and not known to the servant. If a man employs ignorant, inexperienced workmen in dangerous employments, and exposes them improperly to risks of which he is aware, but which are not known to the ignorant workman, he will be liable for the consequences of his misconduct.‡

Negligence or misconduct on the part of a person does not prevent him from recovering damages in those cases where the negligence or misconduct has not been an *immediate* cause of the injury of which he complains.§

* Addison on Torts, 94 ; Dynen *v.* Leach, *supra*.

† See cases in the Appendix.

‡ Bartonhill Coal Co. *v.* Reed, 3 Macq. 295.

§ Greenland *v.* Chaplin, 5 Excheq. 248.

It is the duty of every workman who undertakes the performance of work to execute it with care and diligence, and with the ordinary amount of skill and knowledge incident to his peculiar craft or art. Thus if a man professes to be competent to cut coal, and is in fact so unskilful that he meets with an injury from the fall of the roof, or other casualty, which ordinary skill and precaution might have guarded against, no one is responsible to him in damages, even though the place were a dangerous one.

If a piece of work is placed in the hands of a contractor, who selects his own workmen and servants, and directs them in the performance of the work, having the immediate control over the workmen, such a contractor, and not the person who employs him, is responsible for injuries done to strangers by the negligent execution of the work.*

If the workman is employed in the use of dangerous machinery, furnished by the employer, and is, or professes to be, acquainted with the use of the machinery, and the care requisite to be taken against accident, and, notwithstanding this, sustains injury from his own want of care and caution in the use of it, he has no ground of action against his employer.†

In a Scotch case carried up to the House of Lords, it has been decided that the owner of a mine is bound to exercise ordinary care and vigilance to keep the shaft of the mine and the machinery for lifting people from it and lowering them into it in a secure condi-

* *Steel v. S. Eastern Railway Co.*, 16 C. B. 550.

† *Dynen v. Leach*, 26 Law Journ. Ex. 221.

tion.* It is the master's duty to be careful that his workman is not induced to work under the notion that the tackle or rope with which he works is secure and sound, when he knows, or has reasonable ground for believing, that it is unsafe and dangerous. If the master interferes in the conduct of the work himself, he is bound to find sound and safe materials. If he knowingly allows rotten timber, rotten poles, or unsound ropes, to be used, and injury is sustained therefrom by his workmen, there can be no doubt he is responsible in damages.

In the case of *Brydon v. Stuart*, in the House of Lords (2 Macqueen, 30), a widow sued in the Court of Session for damages for the loss of her husband, who was accidentally killed in the coal and iron works of the defendant. The Lord Chancellor, in giving judgment, said that the work was piece-work, and he assumed that on the day of the accident the men had gone down the coal pit with a determination not to work unless certain remonstrances they had made were attended to. They went down safely, and resolving not to work (on the ground of alleged defects in the lining and ventilation of the pit), they made the signal to be drawn up, and in being drawn up the man Brydon was killed. "A master," he said, "both in Scotland and England, is liable for accidents occasioned by his neglect towards those he employs. But a master is only responsible while the servant is engaged in his employment. But we must take a great latitude in the construction of that phrase.

* *Brydon v. Stuart*, 2 Macq. 34.

Whatever the man does in the course of his master's employ, according to the fair interpretation of the words *etendo*, *morando*, *redeundo*, the master is responsible, and it does not make any difference that the workmen had no lawful excuse or proper cause for leaving their work. If they had said wrongfully, 'We will not work any more, we will terminate our contract, now take us up again,' it was the duty of the master to take them up safely, as to have brought them down safely. The master who lets them down is bound to bring them up, even if they come for their own business, and not for his. He is answerable for the state of his tackle, which in this instance was defective, and his obligation continues even after the men have ceased to work in his employ, but while they are causing themselves to be removed from it."

This is a very important case, because it shows that the highest tribunal in the land is disposed to carry the responsibility of the employer of labour to an extreme point, and the law under this head is finally settled. The men had in fact struck work underground, and required to be lifted to the surface after they had resolved to work there no more. Yet although their conduct was, perhaps, such as to make them liable to certain legal proceedings, yet the master was held responsible for his tackle, whilst it was being used for the purpose of enabling the men to depart from their service, and after they had either broken, or at any rate rescinded, their contracts.

But, on the other hand, if the master does not interfere himself, and employs a competent foreman to superintend the work and select the materials,

and the foreman selects bad materials, which cause injury to the workman working under the foreman's directions, the master is not responsible, as the fault is not in him, but in the foreman and fellow-servant of the injured workman. The case will then fall under that class in which it has been decided that the master is not responsible for injuries to one fellow-servant, caused by the negligence of another fellow-servant in his employ. The principal cases which have been recently decided on this question of the responsibility of the proprietor of a colliery are the following.

Negligence of Master or Servant's Safety.—In the case of *Ormond v. Holland* (Ellis, Blackburn, and Ellis, East, J. 1858, 102), the plaintiff was a brick-layer, working for the defendant. When he was going up a ladder, supplied by the defendant, one of the rounds broke, he fell, and was injured. There was some evidence that the ladder was defective, and the workmen had complained of it among themselves, but it was not shown that the knowledge of this reached the defendants, or their head servants. The defendants proved that they employed a general foreman; that all implements were brought from a yard; and that it was the duty of the gate-keeper of that yard to examine all the plant that went out, and see that it was fit for use. The foreman and the gate-keeper proved that the ladder was in their opinion sound, and that the breakage was owing to some unexplained accident. It was held that the action was not maintainable. Lord Campbell said there was no evidence of personal negligence. The builder used

due and reasonable care to have competent servants, and took extraordinary precaution that the plant should be sound. There being no evidence of personal negligence, either by interference in the work, or in hiring the servants, or choosing the implements, this application must fail.

And in a case which occurred in the American courts, the same principle was affirmed in an able judgment given by Chief Justice Shaw, to the effect that when a master uses due diligence in the selection of competent and trusty servants, and furnishes them with suitable means to perform the service in which he employs them, he is not answerable to one of them for an injury received by him in consequence of the carelessness of another while both are engaged in the same service. This case is quoted at length in Macqueen's Reports, vol. iii. 316.

Negligence of Fellow-workmen.—The case of the Bartonshill Coal Company *v.* Reid * is the leading case on the liability of a master to his servant for the negligence of a fellow-servant. The company were lessees of a coal pit near Glasgow, and engaged Reid and M'Guire to work below as ordinary miners. While they were one day coming up the shaft, Shearer, the engine-man, neglected to stop the cage at the proper time, so that they were dashed against the machinery at the top and killed on the spot. The wives and representatives of each of the workmen brought an action against the company. At the trial there was no evidence that Shearer was an unsteady workman,

* 3 Macqueen, 295.

but the judge directed the jury that if the accident was caused by Shearer's negligence they should find for the plaintiffs. The defendants' counsel excepted to this, and asked the judge to direct the jury that if the defendants used due diligence and care in selecting Shearer as a competent engine-man, and due care in using proper machinery, then the jury should find for the defendants. The judge declined to give this direction, and the jury found for the plaintiffs, damages £100 in each case. A bill of exception was afterwards urged and disallowed, and the defendants then appealed to the House of Lords. After argument and taking time to consider, the judgment of the House in the first case was delivered by Lord Cranworth, and in the second by Lord Chancellor Chelmsford. Lord Cranworth said :—

“ My Lords,—The question for decision in this case is, whether in the working of a mine, if one of the servants employed is killed or injured by the negligence of another servant employed in some common work, that other servant having been a competent workman, and properly employed to discharge the duties intrusted to him, the common employers of both are responsible to the servant who is injured, or to his representatives, for the loss occasioned by the negligence of the other. Where an injury is occasioned to anyone by the negligence of another, if the person injured seeks to charge with its consequences any person other than him who actually caused the damage, it lies on the person injured to show that the circumstances were such as to make some other person responsible. In general it is sufficient for this

purpose to show, that the person whose neglect caused the injury was, at the time when it was occasioned, acting, not on his own account, but in the course of his employment as a servant in the business of a master, and that the damage resulted from the servant so employed not having conducted his master's business with due care. In such a case the maxim '*respondeat superior*' prevails, and the master is responsible. Thus, if a servant driving his master's carriage along the highway, carelessly runs over a bystander; or if a gamekeeper employed to kill game, fires at a hare so as to shoot a person passing along the road; or if a workman employed by a builder in building a house, negligently throws a stone or a brick from a scaffold, and so hurts a passer-by;--in all these cases (and instances might be multiplied indefinitely) the person injured has a right to treat the wrongful or careless act as the act of the master. *Qui facit per alium facit per se.* If the master himself had driven his carriage improperly, or fired carelessly, or negligently thrown the stone or brick, he would have been directly responsible, and the law does not permit him to escape liability, because the act complained of was not done with his own hand. He is considered, and reasonably considered, as bound to guarantee third persons against all hurt arising from the carelessness of himself, or of *those acting under his orders.* Third persons cannot, or, at all events, may not know whether the particular injury complained of was the act of the master or the act of the servant. A person sustaining injury in any of the modes I have suggested has a right to say,

‘I was no party to your carriage being driven along the road, to your shooting near the public highway, or to your being engaged to build a house,—if you choose to do or cause to be done any of these acts, it is to you, and not to your servants, I must look for redress, if mischief happens to me as their consequence.’ A large portion of the ordinary acts of life are attended with some risk to third parties ; and no one has a right to involve others in risk without their consent. This consideration is alone sufficient to justify the wisdom of the rule which makes the person by whom or by whose orders these risks are incurred responsible to third parties for any ill consequences resulting from want of due skill or caution. But do the same principles apply to the case of a workman injured by *the want of care of a fellow-workman engaged together in the same work?* I think not. When the workman contracts to do work of any particular sort, he knows or ought to know to what risk he is exposing himself. He knows, if such be the nature of the risk, that want of care on the part of a fellow-workman may be injurious or fatal to him, and that against such want of care *his employer cannot by possibility protect him.* If such want of care should occur, and evil is the result, he cannot say that he does not know whether the master or servant was to blame. He knows that the blame was wholly that of the servant ; he cannot say that the master need not have engaged in the work at all, for he was a party to its being undertaken. Principle, therefore, seems to me opposed to the doctrine that the responsibility of a master for ill consequences of his servant’s

carelessness, is applicable to the demand made by a fellow-workman in respect of evil resulting from the carelessness of a fellow-workman when engaged in a common work. That this is the view of the subject in England cannot, I think, admit of a doubt.

“ It was considered in the Court of Exchequer in *Priestley v. Fowler* (3 M. & W. 1), afterwards fully discussed in the same court in *Hutchinson v. The York, Newcastle, and Berwick Railway Company* (5 Exch. 349), and acted on by the same court in *Wigmore v. Jay* (5 Exch. 356). Those decisions would not, it is true, be binding on your lordships if the ground on which they rested were unsound. But the circumstances of their having been acquiesced in affords a strong argument to show that they have been approved of ; more especially as in the two first cases the question appeared on the record, and might therefore have been brought before a Court of Error. I may add, that in the case of *Skipp v. The Eastern Counties Railway Company* (9 Exch. 225), a question of a very similar nature to Hutchinson’s case occurred, but the counsel, in argument for the plaintiff, tried to distinguish that case from those I have referred to, but did not attempt to impugn their authority ; and afterwards, in a case in the Queen’s Bench, *Couch v. Steel* (3 Ell. & B. 402), both Lord Campbell and Wightman, J., referred to *Priestley v. Fowler*, apparently with approbation. I think it has been stated at the bar in the argument in M’Guire’s case, that there had subsequently been a case brought before the Court of Error, in which this doctrine has been recognized. I consider, therefore, that in England

the doctrine must be regarded as well settled. But if such be the law of England, on what ground can it be argued not to be the law of Scotland? The law is established in England, and founded on principles of universal application, not on any peculiarities of English jurisprudence; and unless, therefore, there has been a settled course of decision in Scotland to the contrary, I think it would be most inexpedient to sanction a different rule to the north of the Tweed from that which prevails to the south.

“Let us consider whether there has been such a settled course of decision as was contended for by the respondents. (His lordship then reviewed the Scotch cases in detail, and continued.) On this review of the cases, therefore, it appears to me that there is no clear settled course of decision in Scotland, imposing on this house the necessity of holding the law of that country to be different from that of England, and I think that general principle is altogether in favour of the rule established here. When several workmen engage to serve a master in a common work, they know, or ought to know, the risks to which they are exposing themselves, including the risks of carelessness, against which their employer cannot secure them, and they must be supposed to contract with reference to such risks. I do not at all question what was said by the learned judge below, that the real question in general is, what is common work? It is not necessary for this purpose that the workmen sustaining the injury should both be engaged in performing the same or similar acts. The driver and guard of a stage-coach, the steersman and

rowers of a boat, the workman who draws the red-hot iron from the forge, and those who afterwards hammer it into a shape, the engine-man and signal-man on a railway, are all engaged in one common work. So in this case as to the engine-man and the miners. They are all contributing directly to the common object of their common employer, in bringing the coal to the surface. I am therefore of opinion that the exceptions to the ruling of the learned judge at the trial ought to have been allowed, and consequently that the judgment appealed against ought to be reversed. Before I dismiss the case, I am anxious to refer to the very able and elaborate judgment of Shaw, C. J., on this subject, in a case which was decided in the year 1842 in the Supreme Court of Massachusetts. I allude to the case of *Farwell v. The Boston and Worcester Corporation*, reported in 4 Metcalf, 49.

“The plaintiff in that action was an engineer in the service of the defendants, and was engaged in running a passenger train on their line. In consequence of the neglect of one Whitcomb, another servant of the defendants, one of the switches had been improperly left across the line; the consequence was the engine was carried off the line and the plaintiff was severely injured. It was admitted that Whitcomb was a careful and trustworthy man, who had long been entrusted with the care of the switches. On these facts the Court held that the defendants were not responsible to the plaintiff. The Chief Justice, in a very able judgment, discussed the whole subject. He held that the plaintiff and Whitcomb must be considered as servants engaged in one

common work under the defendants, and that every servant engaging in a service attended with danger must be supposed to take upon himself the risk of all perils incident to the service he is undertaking, including those arising from the carelessness of fellow-servants employed in the same work. The whole judgment is well worth an attentive consideration.

“It is sufficient for me to say, that it recognizes, and in the fullest manner adopts, the English doctrine, resting as it does on principles of universal application. I therefore move your lordships that the judgment appealed against be reversed.” And the judgment of the Court below was reversed accordingly.

In the case of *Wilson v. Merry* (J. P. 32-675), Wilson was engaged by a miner to work underground in defendant’s pit. Some alterations had been made in the ventilation a few days previously, and some gas accumulated, exploded, and killed Wilson without any neglect on his part. His widow sued the masters, but it was proved that the general manager was one Jack, who had one Naish under him, whose negligence caused the accident. The judge held that, as the masters had delegated their whole power to another in regard to the matter, they were liable. The case ultimately came up to the House of Lords, and the Lord Chancellor Cairns gave judgment. He approved of the views expressed by Lord Cranworth in the case of the Bartonshill Coal Company, and made this important addition. He said that “he did not think the liability of the master to his workmen could depend upon the question whether the author of the accident

is or is not in any technical sense the fellow-workman or 'collaborateur' of the sufferer. . . . The master cannot be liable to his servant, *unless there be negligence on the part of the master* in that which he (the master) has contracted or undertaken with his servant to do. The master has not undertaken to execute in person the work connected with his business ; at all events a servant might choose for himself between serving a master who does and one who does not attend in person to do his business. But what the master is bound to his servant to do, in the event of his not personally superintending and directing the work, is *to select competent and proper persons to do so, and to furnish them with adequate materials and resources for the work.* When he has done that he has done all that he is bound to do. And if the persons so selected are guilty of negligence, this is not the negligence of the master." Thus it seems to be settled law, that when an accident occurs to a workman by the negligence of a fellow-workman, the liability or non-liability of the master will depend upon the question whether he has used proper diligence and care in providing competent and careful fellow-servants to act with such workman. If he has done so he is not liable for the carelessness or rashness of one who knew his business and wilfully neglected his duty. In the case of *Hutchinson v. York and Newcastle Railway Company* (19 Law Journ. Exch. 296), the late Mr. Baron Alderson gave the following illustration of the rule : "The difficulty," says Baron Alderson, "is, as to the principle applicable to the case of several servants employed by the

same master, and an injury resulting to one of them from the negligence of another. In such a case the master is not in general responsible. Thus, if A. and B. are employed to drive cattle, and they injure a stranger through unskilfulness, the master is responsible. If one driver injured the other while engaged in the same service, he who was injured would have no action against their master. They were engaged in a common service, the duties of which imposed a certain risk upon each of them, and, in case of negligence on the part of the other, the party injured knows that the negligence is that of his fellow-servant, and not of his master." And in another action, brought against the chief contractor of the erection of the Crystal Palace, who employed a sub-contractor for earthwork, and the deceased and others were employed by the defendants to work under their sub-contractor ; while the deceased was engaged at the foot of the tower, a workman of the defendants at the top let fall an instrument which killed the deceased. It was held that the chief contractor was not liable, because both servants were doing the *common* work of the contractors ; and the sub-contractor and all his servants must be considered as being the servants of the defendants. And it has also been laid down that the rule which exempts the master from liability to a servant for injury caused by the negligence of a fellow-servant applies to cases where, though the immediate object on which the one servant is employed is very dissimilar from that on which the other is employed, yet the risk of injury from the negligence of the one is so much a natural and necessary conse-

quence of the employment which the other accepted, that it must be included in the risks which have to be considered in his wages. *Morgan v. Vale of Neath Railway Company* (1 Law Rep. Q. B. 149).

The case of *Griffiths v. Giddow* (31 Law Times) relates to the same point, and is to the same effect. The plaintiff was employed in sinking a coal-pit for the defendant. Something occurred at the top of the pit, (where his fellow-workmen had to empty a tub of water sent from the bottom by the plaintiff and others,) owing to which the tub fell down the pit and injured the plaintiff. There was a defect in the tackle, but the plaintiff was aware of it. An apparatus called a giddy had also been supplied by the defendant to protect the pit's mouth when the tub was emptied. But though this was used when coal was drawn up, it was neglected when water only was brought to the top. Under these circumstances, the Court of Exchequer held the defendant was not responsible. The plaintiff's fellow-workmen neglected to use the giddy. It had been supplied by the defendant, and there was no evidence to show that he had given any orders to discontinue the use of it.

If a work is done under the immediate control and superintendence of a sub-contractor, then he is the person responsible for any wrong done by the workmen he employs. But if the contractor personally interferes and gives directions to his sub-contractor, or the workmen the latter employs, then such contractor would be responsible for the orders he gives.

By the statute 9 & 10 Vict. c. 93, it is enacted that whenever the death of a person shall be caused by

any wrongful act, neglect, or default, which, if death had not ensued, would have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, although the death shall have been caused under such circumstances as amount in law to felony. And (by sect. 2) that every such action shall be for the benefit of the wife, husband, parent, and child of the deceased person, and shall be brought by and in the name of his executor or administrator, and the damages recovered, after deducting certain costs, shall be divided amongst the before-mentioned relatives, in such shares as the jury, by their verdict, shall find and direct. But not more than one action shall (by sect. 3) be in respect of the same subject matter of complaint, and the action must be commenced within twelve calendar months after the death of the deceased person. And (by sect. 4) the plaintiff must deliver, together with the declaration of his cause of action, a full particular of the persons on whose behalf the action is brought, and of the nature of the claim.

CHAP. XVII.

MANSLAUGHTER.

INASMUCH as charges of manslaughter arising out of the deaths of persons employed in collieries occur from time to time, this work would be incomplete without a brief notice of the leading rules and cases of the criminal law upon this subject. Whoever wrongfully, but without malice aforethought, kills any other person is guilty of manslaughter. This head of crime includes deaths caused voluntarily, but under extenuating circumstances, as well as deaths caused involuntarily but not merely by misadventure. It is to this latter class of deaths alone that this section will be confined. The general rule is that where death results from want of due caution on the part of a person, either in doing an act, or, secondly, from his neglecting to perform a duty which is cast upon a person by the law, such person is guilty of manslaughter. The first branch of this rule applies, for instance, to a case where stones are thrown from a height into the street, without the intention of striking any person, but also without reasonable care, and the second branch applies to a case where a pointsman in charge of railway points omits to do his duty and thereby causes the death of a

passenger in a train. (See 1 East's Pleas of the Crown, 265.) Of late years the law of manslaughter, as connected with alleged negligence of duty or want of due care, has been on several occasions defined by judges in cases of railway accidents. This class of cases resemble in many features the cases of alleged negligence, &c., in collieries. In the well-known case of the accident at Shrivenham the prisoner was a servant on the Great Western Railway, and was charged with so negligently placing a truck on the line that a collision took place, and the death of the deceased ensued. In summing up, Lord Cranworth said :—“ There is no question more difficult to deal with than charges of manslaughter arising from want of due care. When a person is in a public situation, having certain duties to perform, and especially when on their performance or non-performance depend the safety or insecurity of other people, then the public have a right to expect a greater degree of caution than under other circumstances would be required. A great deal had been said as to duties more than the parties were equal to perform being cast upon them by the managers of the railway, but with that the jury had nothing to do. The question they had to determine was, whether, there being that establishment, and the prisoner being on it, he was guilty of *culpable negligence*, the result of which was this accident ? ”

In the case of *R. v. Haines* (2 Car. & Kir. 368), it was the duty of the defendant, as ground bailiff of a mine, to cause the mine to be properly ventilated, by causing air-headings to be put up where necessary. If by reason of his omission in this respect another be

killed by an explosion of fire-damp, such person is guilty of manslaughter, if by reason of such omission he was guilty of a want of ordinary and reasonable precaution, and if it was his plain and ordinary duty to have caused an air-heading to have been made, and a man using reasonable diligence would have done it. It is no defence in a case of manslaughter that the death was caused by the negligence of others as well as by that of the prisoner ; for if the death be caused partly by the negligence of the prisoner and partly by the negligence of others, the prisoner and all those others are guilty of manslaughter. This was, however, the ruling of a single but a very learned judge, the late Mr. Justice Maule. In the case of *R. v. Barrett*, in the same volume, the same principle appears to have been recognized.

In the recent case of *R. v. Hughes* (7 Cox's C. C. 301), the prisoner was indicted for manslaughter. The death was occasioned by the falling of a truck full of bricks into the shaft of a mine where the deceased was at work. The truck fell in owing to the prisoner's neglect of duty in omitting to place a stage over the mouth of the shaft. It did not appear that the prisoner was directing or driving the waggon at the time. The accident took place at the Tylecoch colliery, in the county of Glamorgan. Mr. Baron Watson left it to the jury, whether the accident happened by negligence of the prisoner, and whether that negligence arose from an act of *omission or commission*. They found that the death arose from negligent omission on the part of the prisoner in not putting the stage on the mouth of the shaft. After

consideration, the judgment of the Court of Criminal Appeal was delivered by Lord Campbell. He said :— “We are of opinion that this conviction should be affirmed. It was the duty of the prisoner to place the stage on the mouth of the shaft. The death of the deceased was the *direct consequence* of the omission to perform this duty. If the prisoner of malice afore-thought, and with the premeditated design of causing the death of the deceased, had omitted to place the stage, and the death had thereby been caused, the prisoner would have been guilty of murder. If the omission was not malicious, and arose from negligence only, it is a case of manslaughter. There is no authority for the position that without an act of commission there can be no manslaughter. On the contrary, the doctrine is well established, that what constitutes murder, being by design and of malice prepense, constitutes manslaughter when arising from culpable negligence.”

The case of *R. v. Bennett* (8 Cox's C. C. 74) is a very important one on the subject of criminal negligence. The prisoner had for years been accustomed to keep fireworks in a house in London for sale. Part of the process of manufacture of some of them was carried on in his house, contrary to the statute 9 & 10 W. III. c. 7. By the supposed negligence of one of his servants an ignition of red fire was caused, which communicated to the other fireworks, and a rocket shot across the street, and set a house on fire, by which the death of a person was caused. The prisoner was out of the house at the time, and did not personally interfere in any way. The conviction

was held wrong. The Lord Chief Justice said :— “The keeping of the fireworks in the house caused the death only by the superaddition of the negligence of some one else. The keeping of the fireworks may be a nuisance, and if from that unlawful proceeding the death had ensued as a necessary and immediate consequence, the conviction might be upheld. But the keeping them did not alone cause the death, but that act of the defendant *plus* the act of somebody else did. The defendant therefore was not liable.” In other words, it appeared that as the proximate cause of the death was the negligence, not of the defendant, but of the servant, and that servant’s negligence was in no way connected with the keeping of the fireworks, no personal responsibility attached to the owner, although he might have been indicted for a nuisance.

In the case of *R. v. Lowe* (4 Cox’s C. C. 449), the prisoner was charged with manslaughter. He had been employed to attend the steam-engine, by which the skip or basket was raised or let down the shaft with the workmen. When the men came up, it was the prisoner’s duty to set the engine in motion to raise the skip until it reached about two feet above the mouth of the pit, and then to stop the engine, so as to allow a waggon to be moved over the mouth to enable the men to get out of the skip with safety. The prisoner one day left the engine in the care of a lad of fifteen. The deceased made the signal for the skip to be drawn up to the boy at the top, who signalled to the boy who had the charge of the engine. The latter set the engine to work, but failed

in stopping it at the proper time, from ignorance of the duty. The consequence was, that the skip was drawn up to the pulley, and the deceased was forced out, fell down the shaft, and was killed. The opinion of the judge was taken, as to whether a man whose duty it is to attend at a particular place, or fill a particular office, and omits to attend, and leaves an incompetent person in his place, and death ensues, is guilty of manslaughter. Lord Campbell said : "I am clearly of opinion that *an act of omission, as well as of commission*, may be so criminal as to be the subject of an indictment for manslaughter, and that there is evidence to go to the jury of such a criminal omission in this case."

Another charge of manslaughter of this class has just been tried at the assizes for the county of Glamorgan before Mr. Justice Byles. The prisoner was a night overman in a coal-pit near Dowlais. By the rules of the colliery it was ordered that "The overman should maintain a careful supervision over all things connected with the timbering, and general or special safety of the men. That he should see that there was a sufficient supply of timber taken into, and always at hand, in every working place; that the timbers were set in the best possible manner; and that sprags, or short props, should be used in all places where they might be required."

On the 7th of February the deceased went into the pit and proceeded to his stall for the purpose of excavating coal. During the night, requiring timber to prop up his roof, he informed the prisoner he wanted timber, but could not find any. The pri-

soner replied, "I cannot think why it is that timber does not come to the work." The deceased returned to his stall, and while continuing his work a portion of the roof fell on him and killed him. It was contended on the part of the prosecution that under the rules above mentioned it was the duty of the overman to see that timber was supplied and properly placed, and that if there was no timber available he ought to have stopped the work. It was also argued that his omission in this respect, on the authority of the "*Queen v. Hughes*," made him criminally liable.

Mr. Giffard took various technical objections to the admissibility of the rules of the pit, and also as to their effect. His lordship, however, overruled the objections. At the termination of the case for the prosecution, Mr. Giffard submitted to his lordship that there was no case for the jury. His lordship said he should reserve all the points suggested by Mr. Giffard for the consideration of the Court of Criminal Appeal. Mr. Giffard addressed the jury on the facts of the case ; and his lordship, having summed up with great care and minuteness, asked the jury the following questions :—

Did the prisoner know of the rules ?

Was there such negligence in the prisoner's not supplying timber as led to the death of the deceased ?

Was there such negligence in the prisoner in allowing the deceased to go on working as led to the death of the deceased ?

The jury answered all three questions in the affirmative.

The judge then told the jury that he thought,

having answered the questions as they had, they ought to return a verdict of *guilty*, which was accordingly done.

The prisoner was allowed to enter into his own recognizance to come up for judgment when called upon.

The decisions on points of interest to the managers and workmen of collieries, of later date than the first edition, are few in number. It does not appear from the reports that the case last referred to was afterwards argued. In the case of *R. v. Gregory*, 2 F. & F. 153, an explosion had occurred on board a steamer, whereby one of the three persons in charge of her was killed. It was held by Mr. Justice Hill that the circumstance that the valves, &c. were out of order was not sufficient to make out against the master and surviving engineer such a case as would sustain a charge of manslaughter. The case of *R. v. Ledger*, 2 F. & F. 857, throws some light upon the case where death has been occasioned by joint negligence. Chief Justice Erle laid it down that though manslaughter may be maintained where the death was the result of the joint negligence of the prisoner and others, yet it must have been the *direct result, wholly or in part, of the prisoner's negligence*; and his neglect must have been wholly or in part the proximate and efficient cause of the death; and it is not so where the negligence of some other person intervened between his act or omission and the fatal result.

From the previous cases and quotations, the general principle is made clear that bailiffs, overmen, and all persons in offices and situations in coal mines who

have duties to perform, on the due and careful performance of which the lives of others depend, are bound to bring to the exercise of those duties ordinary and reasonable precaution. But no man can be convicted of manslaughter for a mere mistake, or error of judgment. If he acts to the best of his judgment or ability in the discharge of his duty, but acts erroneously from want of good judgment, he is not criminally responsible. If he is seeking to do the best he can under the circumstances, and is acting to the best of his judgment, however unfortunate that judgment may be, he is not to suffer for his innocent error. But at the same time every person who undertakes a duty or office is bound to bring to it *ordinary* care, skill, and diligence. It is the absence of *ordinary* not *extraordinary* precaution or care that constitutes negligence culpable. It is a matter which is not capable of a closer definition. Each charge of criminal negligence, depending on its own surrounding circumstances, must be left to the jury, with general advice to say whether in their opinion the alleged negligence or omission was so gross as to justify them in finding the accused guilty of manslaughter. When the terrible explosion at the Cymmer colliery (in which 114 persons lost their lives) was under investigation, the coroner took great pains to collect and state the law for the guidance of his jury. He put to them the question whether the explosion arose from accident, or from the negligence or carelessness of anyone, as in the former the verdict should be accidental death, in the latter it would be manslaughter. If the evidence led them to be-

lieve that the catastrophe did not arise from any negligence or carelessness, but was one of those unforeseen casualties that must necessarily attend all mining operations, then, however serious the consequences, it would only amount to accidental death ; but if on the other hand they considered that the explosion arose from carelessness or negligence of the managers, agents, overmen, or others, who had duties to perform in reference to that pit, then it would be their duty to find a verdict of manslaughter against the delinquent. In considering these points they would be greatly assisted by the established rules of the colliery. If they should be of opinion that the occurrence arose from the neglect of anyone, or the omission of any precaution that ought to have been taken, then they would be able to ascertain from the rules whether it was required by those rules to be performed, and whose duty it was to perform it. By that means they would be able to discover who was the delinquent, and to say whether he was not criminally liable for his conduct.

To conclude this section it need only be added that the alleged negligence must be personally brought home to the party charged. Thus, where in Hilton's case (reported in Lewin's Crown Cases), the prisoner was indicted for manslaughter, it appeared that it was his duty to attend to a steam-engine. On the occasion in question he had stopped the engine and gone away, and during his absence another person set it in motion and could not stop it, and in consequence of this the deceased was killed. The prisoner had no doubt been negligent in his duty, but Mr.

Baron Alderson said, that as the death was not the *immediate consequence* of the act of the prisoner he must be acquitted. It was necessary, he added, for a conviction for manslaughter, that the negligent act which causes the death should be that of the party charged.

CHAP. XVIII.

TRUCK.

OFFENCES under the Truck Act, 1 & 2 Wm. IV. c. 37, consist in the payment of the wages of colliers and other classes of workmen there specified, otherwise than in coin.* The statute enacts that any contract in which the whole or any part of the wages shall be made payable in any other manner than in the current coin of the realm (sect. 1), or in which any provision shall be made directly or indirectly respecting the place where, the manner in which, or the person with whom, any part of the wages shall be laid out or expended, is absolutely void. (Sect. 2.) The entire amount of wages shall be actually paid in coin, and not otherwise; and any payment made by the employer by the delivery of goods, or otherwise than in coin, except as therein mentioned, is also void. (Sect. 3.) The artificer or collier may recover so much of his wages as shall not have been actually paid in coin, and the employer may not set off the value of any goods supplied to the collier, at any shop or warehouse kept by or belonging to the employer, or in the profits of which he has any share or interest. (Sects. 4 and 5.) No action will lie to

* Originally, truck meant barter or exchange; but it has now acquired the technical meaning above given.

recover the value of such goods ; and if the collier or his wife, widow, or child, become chargeable to any parish, the amount of wages earned by such person within the three preceding calendar months, and not paid in cash, may be recovered by the overseer. (Sects. 6 and 7.) The order for wages may be made and served on any one or more of co-partners. (Sect. 13.)*

The statute applies to the case of artificers, workmen, labourers, and other persons employed in or about the working or getting of any mines of coal, ironstone, limestone, &c., and many other employments which need not be mentioned here.

But nothing in the Act is to extend to prevent any employer of any artificer, or any agent of such employer, from supplying or contracting to supply to any such artificer any medicine or medical attendance ; or any fuel, or any materials, tools, or implements to be by such artificer employed in his trade or occupation, if such artificer be employed in mining ; or any hay, corn, or other provender to be consumed by any horse or other beast of burden employed by any such artificer in his trade and occupation ; nor from demising to any artificer, workman, or labourer employed in any of the trades or occupations enumerated in the Act the whole or any part of any tenement, at any rent to be thereon reserved ; nor from supplying, or contracting to supply, to any such artificer any victuals, dressed or prepared under the roof of any such employer, and there consumed by such artificer ;

* But see p. 314 as to this liability.

nor from making, or contracting to make, any stoppage, or deduction, from the wages of such artificer for or in respect of any such rent, or for or in respect of any such medicine or medical attendance ; or for or in respect of any fuel, materials, tools, implements, hay, corn, or provender, or of any such victuals dressed and prepared under the roof of such employer, or for or in respect of any money advanced to such artificer for any such purpose as aforesaid ; provided that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn, and provender, and shall not in any case be made from the wages of such artificer, unless the agreement or contract for such stoppage, or deduction, shall be in writing, and signed by such artificer. (Sect. 23.)

No justice engaged in any of the trades or occupations enumerated in the Act, or being the father, son, or brother of any such person, is to act as a justice under this Act. When the magistrates for any borough are disqualified by the provision, the complaint may be heard by the magistrates of the county in which the offence is committed, and the complainant may remove his information to any court of petty sessions within twelve miles of such borough. (Sect. 22.)

The prosecution must be commenced within three calendar months. Any employer of an artificer in the trades to which the Act applies, who shall by himself, or by the agency of any other person, directly or indirectly enter into any contract, or make any payment, declared to be illegal thereby, is liable, for

the first offence, to a penalty not exceeding ten pounds and not less than five pounds ; and for a second offence, not exceeding twenty nor less than ten pounds ; and for a third offence, be guilty of a misdemeanor, punishable by fine only, not exceeding one hundred pounds. (Sect. 9.)

These penalties are recoverable before two justices, or one stipendiary magistrate, the offender having been previously served with a summons, either personally or left at his place of business or residence, such residence being the place used for carrying on his business. On non-payment of the penalty and costs they may be levied by distress. If it appears by confession, or on the oath of a witness, that there are not sufficient goods within their jurisdiction, the justices may commit the offender to gaol for three calendar months, unless the penalty and costs be sooner paid. But no partner is to be liable in *person* for the offence of his co-partner, committed without his knowledge or consent. All workmen and other persons engaged in the performance of any work, of what nature soever, are to be deemed "artificers." All masters, bailiffs, foremen, managers, clerks, and other persons, engaged in the hiring, employment, or superintendence of the labour of artificers, are to be deemed "employers." Any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done, or to be done, in a certain or uncertain time, or to a certain or uncertain amount, is to be deemed "wages ;" and the word "contract" is to be construed in the largest possible sense.

This Act is held to apply to a working collier who is paid by the ton, and who was at liberty to employ other men to assist him, if the court find that the agreement amounts to a contract for *personal service*.* But if the contract is performed altogether by others, such a party is a contractor and not a servant, and if the person employed or contracting shall take any other person to help him, or do more than engage his personal labour, the case is not within the statute. In the case of *Ingram v. Barnes* (26 Law J., Q. B. 32), the plaintiff, a labouring man, entered into a contract to make as many bricks for the defendant as he might require; the defendant to find all materials, and the plaintiff to find the labour, for 10s. 6d. a thousand. The work was to be done under the direction of the defendant. The plaintiff himself, assisted by others, employed by him, laboured in the making of the bricks under the contract. The defendant partly paid the plaintiff by tickets for goods. The Court of Queen's Bench held that the plaintiff was not an artificer working for wages within the Truck Act, as he was not bound to do the work personally. Lord Chief Justice Cockburn said that "the Act is to be taken as applicable to persons only who strictly contract as labourers, that is, to such as enter into a contract to employ their personal services and to receive payment for that service in wages. The intention of the 1 & 2 Wm. IV. c. 37 was to afford protection to a class of persons not very able to protect themselves. The persons the Act was meant to

* *Floyd v. Weaver*, 21 Law Journ. 151.

benefit are those who hire themselves to labour with their hands for daily or weekly wages, and it was not at all designed for the protection of persons taking contracts for labour to be done by other persons who speculate upon the state of the labour market. . . . The statute is intended to protect those persons only who engage themselves as artificers and labourers, not persons entering into contracts as contractors. This is manifest when the different sections are looked at. The first speaks of the hiring of an artificer, to be paid by wages. The third uses the expression 'wages earned' in respect of any labour to be done by him. Section 5 speaks of the 'wages of *his* labour.' These sections all refer to the case of a man engaging to furnish his own labour as an artificer or labourer, to be paid for it by wages, and altogether distinguish it from the cases in which a man contracts to get work done." The case of *Floyd v. Weaver* was cited, in which Wightman, J., and Patterson, J., appear to have been of opinion that though a man may employ others, if he engages to do a portion of the work himself, that would be within the statute. "It is not necessary for us to review or overrule that decision, but it deserves serious consideration how far it can be supported ; but both judges agree in this, that if the party was *only at liberty* to use his own labour, but *not bound to work himself*, he was not within the statute." And Mr. Baron Martin said that "if the contention for the plaintiff were right, it would follow that a justice of the peace, though he could have no original jurisdiction with respect to the contract itself, yet might order payment again if the

payment of the 10s. 6d. per thousand had been made in goods." And Mr. Baron Bramwell added : " Whatever definition one gives to the term 'wages,' a portion of what the plaintiff gets here is profits made and makeable by the employment of other people under him. If a portion is that, the whole is not wages. If the whole is not wages, it is not a case within the statute, for the statute contemplates that the remuneration shall be wages and nothing more."

In the case of *Sleeman v. Todd* (33 Law Journ. N. S. Exch. 153), it was held that butty colliers working under verbal contracts, generally by the day, but also by the ton or yard, not being allowed to underlet the work, or to work elsewhere, but doing it as they liked, and in fact working themselves and employing men under them, for whose wages they were responsible, were not within the Truck Act. Chief Baron Pollock said, "The case is within the Truck Act or not, according as the contract is for mere labour or for the result of labour;" that is, for the effect that labour is to produce, as in a contract for the removal of a quantity of clay.

In the case of *Millard v. Kelly* (22 J. P. 736), the question was whether Millard was rightly convicted under the Truck Act for the payment of wages in shop goods to Kelly. It was contended that Kelly was not an artificer within the Act. The 19th section extends the operation of the statute to artificers, labourers, &c., and other persons employed in and about the manufacture of iron and other specified trades. It appeared that Kelly was employed in the vicinity of certain iron works in unloading boats which conveyed the coal for the use of the works.

The canal was a private branch belonging to the proprietors of the works, and ran into the middle of the works. The wharf where Kelly worked was in the middle of the works. He was also employed in loading iron into the empty coal-boats. The defendant was not himself an iron-master but a contractor, carrying coal and iron at a certain price per ton. The Court said: "The defendant is employed in loading the manufactured iron. That is quite decisive."

Stoppages from Wages.—In the very recent case of *Archer v. James*,* a question arose upon sect. 3 of the **Truck Act**, which enacts that "the entire amount of the wages earned, &c., shall be actually paid to the artificer in the current coin of the realm, and not otherwise." The plaintiff was a frame-work knitter, working in the factory of the defendant, and was paid at the rate of 7d. a dozen. But from this payment there were certain *stoppages* deducted, under the heads of frame-rent, steam, gas, firing, and waiting-room, &c. It was contended that these stoppages were illegal, and amounted in fact to a payment of wages other than in the coin of the realm. But it was held by the Court of Queen's Bench that such deductions or stoppages were not illegal. Mr. Justice Wightman remarked, that whatever doubt he might have entertained if this case had now come before the Court for the first time, he thought himself bound by the decision in *Chowne v. Cummings* (8 Q. B. 311).

In that case the plaintiff was a weaver of gloves for

* 1 Cox's *Magistrates' Cases*, 2.

the defendant in frames provided by the latter at an agreed gross price per dozen pairs. The defendant was a sub-contractor. He settled with the plaintiff weekly, and deducted out of the gross price certain charges according to the known custom of the trade—such as frame-rent for use of defendant's premises, defendant's loss of time in procuring materials and conveying them to the plaintiff, superintendence of the work, sorting the goods, payment to a boy for winding yarn, &c. &c. There was no written contract. It was held that the agreement to pay plaintiff's wages with these deductions was not a contract to pay part of such wages otherwise than in the current coin within sect. 1, nor was a contract in writing under sect. 23 necessary to legalise such deductions.

The decision of the Court of Queen's Bench in *Archer v. James* was appealed against and argued in the Exchequer Chamber. The six judges were equally divided, and consequently the judgment of the Court below was affirmed.

In the recent case of *Cutts v. Ward* (4 Cox's Magistrates' Cases, p. 328), it appeared that the plaintiff was engaged as a collier, and had signed certain rules, one of which provided that all rents of houses due to the owner of the works, and all charges to which a workman should be liable for wood, tools, or working materials obtained from the stores, and for medicine and medical attendance, and all other lawful stoppages, should be deducted from the earnings of each workman before payment thereof. Certain wages having become due to the plaintiff, stoppages were made, 1, for rent ; 2, for wood used by him belonging to the de-

fendant to support the mine ; 3, for subscriptions to a club established by defendant to afford medicines and medical attendance to the men in sickness. It was held that the first and third deductions were lawful as being within the 23rd section of 1 & 2 William IV. cap. 37, but that the second was not lawful as not being within it.

Again, if an artificer receive *of his own accord* goods at a shop kept by his employer, and the amount is afterwards deducted from his wages at the next settling, this is a payment in goods which comes within the statute. (*Wilson v. Cookson*, 32 Law Journ. M.C. 117, and 13 C. B. Rep. 496.) And if payment of wages has been made in goods no subsequent payment of the same in cash can purge the offence.

These are some of the most recent decisions upon the statute. A few considerations are added as to the influence of this system upon the position of the employer and the workman.

What influence and practical effect this statute has had in causing a discontinuance of the practices against which it was directed, the writer has no means of discovering. There is no doubt that truck is quite unknown in the great iron-works and collieries in the valley of Merthyr Tydfil, and that no "company's shop" exists there. Nor has any prosecution been instituted in any part of the district over which the author has jurisdiction since his appointment, which is a period of nearly nine years. If, as he has been informed, truck does exist in some places within that district, and also in part of Monmouthshire, it is not difficult to account for the fact

that there have been no recent prosecutions. One reason may be that payments may be made in cash, which is expected and understood to be expended in shops close at hand in which the employer has an interest, but which payments are not strictly within the prohibitions of the statute. In the next place, it is probable that even where illegal acts take place, and orders for goods, in lieu of cash, are directly given, the system is not so unpopular as is commonly supposed. In the more remote districts, the employer, by the greater command of capital, is enabled to purchase more favourably than the small trader, and the certainty of being paid by his own workmen, whose labour is his security, enables him to sell upon favourable terms. Thus the workman gets a better article at a reasonable price, and to some extent is kept out of debt in spite of himself. All this tends no doubt to the comfort of his home. It is probable that the system is not very objectionable in the opinion of the workmen's wives, as it must have some influence in increasing their command over the necessaries of life, and checking expenditure at the public-house. But on the other hand truck was formerly a monstrous evil. Before it was made unlawful, there is no doubt that the truck system was carried on in a manner that was most injurious to the working men. The evidence taken before the committee of the House of Commons proves this to demonstration. At the present time the evil is not so great. Many works have discontinued it altogether, whereby the workman has more chances of obtaining employment where he is sure of receiving payment in cash. If he dis-

likes and becomes discontented with his situation, he can give notice, and get work elsewhere free from the objectionable condition. Nevertheless it is well known that workmen often become so attached to the spot in which they have been accustomed to labour, that they will there tolerate arrangements which they dislike and object to. It is also well known that they will take goods from the "company's shop," and sell them again in the public-houses at a reduced price, thus losing, perhaps, a penny out of 7*d.* or 8*d.* worth of tobacco, &c., on the transaction. This is an evil and an injury to the workman. But it may be said that he has his remedy in his own hands to some extent. Yet every experienced person must see that the difficulties which lie in his way in conducting a prosecution to a successful issue are almost insurmountable. He has a powerful adversary to deal with, with command of money and legal assistance, and the contest would often be a very unequal one. He must advance money, and lose time—two things which he can seldom afford to do. Perhaps he may be a little behind-hand at the shop. This is another incident which is mischievous to the workman. It puts him in the power of the employer to some extent, and thus deprives him of that perfect freedom of action which the law desires to secure to him. But, after all, the greatest evil consists in the deliberate carrying on of a system which is prohibited and forbidden by law. It is true that truck is a "malum prohibitum," and not a "malum in se;" that is, it was made an offence by the municipal law, and not by the fundamental laws

of morality. But it must be remembered, that it was so constituted an offence and publicly forbidden, because it was proved to have led to real evils of various kinds. And even if that were not so, yet as we live in a society which is only held together by a mutual agreement to obey the municipal laws, no class can deliberately, and wilfully, and habitually ignore and set at nought those laws, or any of them, without doing mischief, morally and socially, where such acts are witnessed. It places the employer in a false position, and weakens his influence for good. In vain will he educate, or build churches, so long as he sets an open example of disobedience to or evasion of the law. If truck be made a means of oppressing the workman, it cannot be too loudly denounced. This is, perhaps, rarely the case now. But even in the absence of all oppression or fraud, how can the employer equitably and fairly charge his workman with breaches of contract, or disobedience to byelaws and special rules, or other offences of a similar private character, while he himself is setting the example of a deliberate and wilful disregard of a public law which regulates their mutual relation? It is on this ground more than any other that this practice ought to be discontinued at once.

CHAP. XIX.

COMBINATIONS, STRIKES, MOLESTATION, ETC., OF
WORKMEN.

By the statute 6 Geo. IV. c. cxxix. s. 3, it is enacted, that “if any person shall, by violence to the person or property, or by threats or intimidation, or by molesting or in any way obstructing another, force, or endeavour to force, any journeyman, manufacturer, workman, or other person hired or employed in any trade or business, to depart from his hiring, employment, or work, &c., or prevent, or endeavour to prevent, any workman, &c., not being hired or employed, from hiring himself to, or from accepting work or employment from any person or persons;—or if any person shall use or employ violence to the person or property of another, or threats of intimidation, or shall molest or in any way obstruct another for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular club or association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied or

refusing to comply with any rules, resolutions, &c., made to obtain an advance, or to reduce the rate of wages, or to lessen the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof; or if any person shall by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any manufacturer or person carrying on any trade or business to make any alteration in his mode of regulating, managing, or carrying on such manufacture, trade, &c., or to limit the number or description of his workmen, servants, &c. : every person so offending, or aiding, assisting, or abetting therein, being convicted thereof in manner herein-after mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to hard labour for any time not exceeding three calendar months."

This statute does not extend to any meetings held either by masters or workmen for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting shall require for their work, or pay to their workmen, or the hours of working and employment, or to any agreement, verbal or written, entered into among themselves for such objects and purposes. (Sections 4 and 5.)

The Act further provides, that offenders shall be compelled to give evidence, and shall be indemnified from the consequences. It also contains provisions for summoning offenders before one or more justices

of the peace, and for issuing warrants for their apprehension when they do not appear upon summons, and for regulating the entire proceedings before the justices. An appeal is given to any person convicted under this Act who shall think himself aggrieved to the next quarter sessions. And no justice of the peace, being also a master in the trade in which any offence is charged to have been committed under this Act, shall act as a justice under it.

This statute will not empower workmen to meet and combine for the purpose of dictating to their masters whom they shall employ, and consequently a combination of workmen for such a purpose is indictable as a conspiracy.*

But it is clear that a *mere combination*, either of masters, for the purpose of lowering wages, or of workmen, for the purpose of raising them, is perfectly legal. So long as such persons limit themselves to *merely combining* to effect the object they have in view, they will be guilty of no offence. But if, in order to attain their object, whether of lowering or raising wages, they proceed to use violence, threats, intimidation, molestation, or obstruction, with a view to *force* others to adopt their views, they will be guilty of an offence against this Act of Parliament ; and may also, under some circumstances, render themselves liable to an indictment for conspiracy.

It has been further enacted by the 22 Vict. c. xxxiv., " That no workman, or other person, whether actually in employment or not, shall by reason merely of

* R. Bykerdyke, 1 Mood. & Rob. 179.

his entering into an agreement with any workman or workmen, or other person or persons, for the purpose of fixing or endeavouring to fix the rate of wages or remuneration at which they or any of them shall work, or by reason merely of his endeavouring peaceably and in a reasonable manner, and without threat or intimidation, direct or indirect, to persuade others to cease or abstain from work, in order to obtain the rate of wages or the altered hours of labour so fixed or agreed upon, or to be agreed upon, shall be deemed or taken to be guilty of molestation or obstruction, within the meaning of the 6 Geo. IV. c. cxxix., and shall not therefore be subject or liable to any prosecution or indictment for conspiracy : provided always, that nothing herein contained shall authorize any workman to break or depart from any contract, or authorize any attempt to induce any workman to break or depart from any contract."

The following extract from a luminous and most valuable charge to the grand jury of the county of Stafford, by the late Lord Chief Justice Tindal, is well worth a careful perusal. It was delivered at a special commission, in 1842, at a time when many local disturbances had taken place. "If the workmen of the several collieries who complained that the wages they received were inadequate to the value of their services had assembled themselves quietly together, for the purpose of consulting upon and determining the rate of wages or prices which the persons present at the meeting should require for their work, and had entered into an agreement amongst themselves for the purpose of fixing such rate, they would

have done no more than the law allowed. A combination for that purpose and to that extent is no more than is recognized as legal by the statute 6 Geo. IV., by which statute also exactly the same right of combination, to the same extent, and no further, is given to the masters, when met together, if they are of opinion the rate of wages is too high." After some further observations, the learned judge, referring to certain discontented workmen, thus continues:—"Unfortunately for themselves and others, those who were discontented did not rest here. Not satisfied with the exercise of their own right to withhold their own labour, if they were discontented with the price they received for it, they assumed the power of interfering with the right which others possessed of exercising their discretion upon the same point. Accordingly, you will have numerous cases laid before you, in which large bodies of dissatisfied workmen interfered, by personal violence, and by threats and intimidation, to compel others, who were perfectly willing to continue to labour in their callings at the rate of wages then paid, to desist from their work, to leave the mine or manufactory, and against their own will to add themselves to the numbers of the discontented party ; than which a more glaring act of tyranny and despotism by one set of men over their fellows cannot be conceived. If there is one right which, beyond all others, the labourer ought to be able to call his own, it is the right of the exertion of his own personal strength and skill in the full enjoyment of his own free will, altogether unshackled by the control or dictates of his fellow-workmen. Yet,

strange to say, this very right, which the discontented workman claims for himself to its fullest extent, he does, by a blind perversity and unaccountable selfishness, entirely refuse to his fellows who differ in opinion from himself. It is unnecessary to say that a course of proceedings so utterly unreasonable, so injurious to society, so detrimental to the interests of trade, and so oppressive against the rights of the poor man, must be a gross and flagrant violation of the law, and must be put down, when the guilt is established, by a proper measure of punishment." *

In the case of the Queen *v.* Rowlands (21 Law Journ. M. C. 81), Mr. Justice Pattison, in passing sentence on some workmen who had been convicted upon an indictment under the statute of Geo. IV., said:—"The object of the legislature was that all masters and workmen should be left free in the conduct of their business. The masters were at liberty to give what rate of wages they liked, and to agree among themselves what rate of wages they would pay. In like manner the workmen were at liberty to agree among themselves for what wages they would work, and were not restricted in so doing by the circumstance that they were in the employ of one or other of the masters. The intention of the legislature was to make them quite free. But seeing that intimidation might be used to carry out such agreements, it was enacted by 6 Geo. IV. c. cxxix.," &c. Here the judge read part of that statute, and added: "The offence does not consist in the combination to raise their

* Carr & M. 662.

wages, but in the use of threats, intimidation, molestation, and obstruction."

Two cases have recently been decided which throw fresh light upon this enactment. In the case of the Queen against Pearham,* the defendant was convicted "of having unlawfully by threats endeavoured to force one Jocelyn, who was then and there hired in his capacity and business as a mason by J. P. and W. P., to depart from his said hiring." The Lord Chief Baron, in delivering the judgment of the Court of Exchequer, upon the application for a writ of habeas corpus, said (*inter alia*), that it had been contended, first, that the nature of the threats was not set out ; and, secondly, that it was not set out to whom the threats were made. The answer to these objections given by the Court of Queen's Bench to a previous application on these facts to that court was, that the Metropolitan Police Act provides that it shall be sufficient if the offence is set out in the conviction, in the language in which it is described in the Act of Parliament creating it. We are of opinion that the judgment of the Court of Queen's Bench upon this precise point is perfectly correct. But Mr. James brought before us by affidavit what professes to be a copy of the information that was filed, in which the informant says upon oath : "On the 1st of October last I was in Goswell Road with W. J. and fifteen or sixteen other workmen, all engaged by Messrs. P. as workmen. Pearham was there ; he said to the men, 'If you work there we shall consider you as blacks,

* 1 Cox's Magistrates' Cases, 23.

and when we go in we shall strike against you, and strike against you all over London.' He followed us all the way to my house." It is impossible, I think, to doubt what is the meaning of this, and what is the object of it. It is impossible to doubt that there is here evidence of a threat, "we shall consider you as blacks."

Thus it appeared that, in the opinion of this court, the words complained of were calculated to force the person to whom they were addressed to depart from his hiring.

Another very important case, that of *Walsby v. Anley* (1. Cox's M. C. 288), has recently been decided by the Court of Queen's Bench, upon an appeal from a conviction of two carpenters by Mr. Corrie, a police magistrate of the metropolis. The charge arose out of circumstances connected with the well-known "Builders' Strike" of 1860. The informations stated that on a certain day the defendants did unlawfully by threats and intimidation endeavour to force their master to make an alteration in his mode of conducting and carrying on his business. At the hearing it was objected, first, that the summons was bad for charging the defendants with making use of threats *and* intimidation, which by the statute were separate offences. But Mr. Corrie said, that if there was a conviction it would be for one offence, and the objection was ultimately withdrawn. The complainant stated that on May 16th, 1860, he had about 100 joiners in his employ, and among them were two who were working under what is known in the trade as the "declaration."

On the morning of the 16th the foreman brought him a paper, which ran as follows :—“At a meeting of the joiners in the employ of Mr. Anley, May 15th, 1860, it was resolved that Mr. Anley be given to understand, that unless the men who are working under the ‘declaration’ in his shop be discharged, and we have a definite answer by dinner time to that effect, we cease work immediately.” The paper was not signed, and Mr. Anley declined to consider it on that ground. The defendants, Griffin and Walsby, afterwards on the same day brought to him the same paper, stating that they were a deputation from the men. In a conversation which ensued, Mr. Anley said, “What is it that you want?” and the answer he received was, “You must discharge those two men who are working under the declaration, and if you don’t we shall leave your work.” Mr. Anley said, “I will not allow myself to be dictated to. I will give you half an hour to reconsider the matter. If you then come back to work I shall think no more about it; if not, I will rather close my shop than submit to your dictation.” The three men went away, and in about half an hour all the men returned together, and went towards the shop, saying they were going to fetch their tools. They were paid, took away their tools, and did not return. Since then the yard has been picketed by relays of these men, in order to prevent other men from entering his employment. Mr. Corrie said (amongst other things), “The question is, have the defendants made use of a threat punishable under sect. 3 of the

6 Geo. IV. c. cxxix. ? That section enacts, that it shall be an offence punishable with a certain imprisonment if any person shall by threats endeavour to force any person carrying on any trade or business to limit the description of his workmen. Have the defendants been guilty of this offence ? They are proved to have said to their masters, "that unless the men who are working under the declaration in the master's shop be discharged, and we have a definite answer by dinner time, we cease work immediately." In other words, "we will strike, and thus gradually inconvenience you, if we do not entirely stop your business." The demand itself is a threat. In the case of the Queen *v.* Pearham, I acted on the authority of the Queen *v.* Rowland (2 Denison's Crown Cases). But the Queen *v.* Pearham is now an authority itself, because my judgment was confirmed by the Courts of Queen's Bench and Exchequer. I then held that it was an offence within the section for the defendant to threaten workmen that if they accepted employment under this declaration, the unionists would not work with them. In the present case the threat is made to the master, but directed both against the master and workmen, and is expressly within the Queen *v.* Rowland. "I am of opinion that the present case is also an offence under this section ; indeed, it is the very case which that Act was passed to meet. It is a threat that if the master should continue to employ that description of workmen who had worked under the declaration, the defendants would strike; and thus

endeavour, in the very words of the prohibition, to force the master to limit the description of his workmen. Let us see what the 'declaration' is. The workman declares as follows :— 'I declare that I am not now, nor will I during the continuance of my engagement with you, become a member of, or support, any society which directly or indirectly interferes with the arrangements of this or any other establishment, or the hours or terms of labour ; and that I recognize the rights of employers and employed individually to make any trade engagements on which they may choose and agree.' Now I say as a lawyer that it did not require any Act of Parliament to make illegal any association or combination of men which attempts to interfere with such matters ; they were illegal at common law. Then it comes to this. All that the masters have asked the men is not to belong to an illegal society. All that the men have declared is, that they will not be guilty of a crime. Nothing can be more monstrous and illegal than the conduct of the defendants, who have combined together and threatened the prosecutor that they would strike, and who have in fact struck work, with a view to prevent him carrying on his business, unless he will discharge men whose only offence, as far as I can see, is that at the request of their employer they have promised not to break the law. Fewer crimes can be named which are more wicked. The object which the defendants have in view is to deprive innocent men of the means of getting their living, and thus to drive their wives

and families into the workhouse, unless those poor men will also offend against the law by joining those illegal societies."

Two of the defendants were then convicted and sentenced to one calendar month's imprisonment; but notice of appeal having been given, they were liberated on bail.

On the 21st of January 1861, the case was argued before the Court of Queen's Bench on a case stated for their opinion. It was contended on the part of the appellants that no threat had been used, and that all that the men had done was to inform their master that they would leave his service if he did not dismiss the obnoxious workmen. Every man had a perfect right to leave if he liked, and there was no threat either to the person or the property of the employer. But the Lord Chief Justice said he was of opinion that the conviction ought to be affirmed. Every workman was entitled freely to exercise his discretion as to whether he would continue in the employ of his master, as long as he was not bound by any contract. And more than that, he had a perfect right to give the employer the alternative of either discharging an obnoxious servant, or losing his services. But if they went further than that, and sought to coerce their master by the threat of what was likely to operate to his injury, they came within the Act. In the present case it was not one man only who went to the master, but several, and they all adopted the same course with the object of preventing the master from exercising his discretion, and to coerce him. His lordship thought

that for the workmen to act in this way and for this object made their conduct altogether illegal, and it amounted to a "threat" within the Act of Parliament.

Mr. Justice Hill said that "he thought if each of the workmen had gone singly and honestly, and had given their master the alternative, it would not have been illegal ; but when they *combined* for the purpose of coercing their master, they were guilty of an illegal conspiracy at common law. This combination and attempt to carry it out were both illegal, and they might have been indicted for it at common law." The conviction was affirmed.

Since these cases were decided, others of great importance have followed, which throw a strong light on the question, what are and what are not threats and intimidation under the statute ? The first to be referred to is that of *R. v. Druitt and others* (4 Cox's M. C. p. 468).

It was an indictment for conspiracy by unlawful contrivances, &c., to impoverish H. Poole and others in their business, and to restrain the freedom of trade and personal action. The defendants were members of a trades union of the tailors. The workmen having, at the instigation of the union, struck for wages, and the masters having employed workpeople, men and women, not being members of the union, the defendants, who were members of the managing committee of the union, caused "pickets" to be stationed about the doors of such employers to note workpeople who went in and out, for the purpose of deterring them from continuing in such employ, and inducing them

to join the union. Proof was given of the use of insulting expressions and gestures used by the "pickets" to the non-union workpeople. This was held to be "intimidation," "molestation," and "obstruction," within the meaning of the above cited statutes. Mr. Baron Bramwell said, that by the common law, liberty of a man's mind and will, how he should bestow himself, and his means, his talents, and his industry, was as much the subject of the law's protection as was that of his body. Therefore, that if two or more persons agreed to co-operate against that liberty of thought and freedom of will, they would be guilty of a conspiracy. And if any person by threats, intimidation, or molestation, or in any other way, endeavour to deter or influence any person in the employment of his industry, talents, or capital, in any lawful manner, or to obstruct, force, or endeavour to force, any journeyman to depart from his hiring, or to prevent him from hiring himself, he would be guilty of an offence against the statutes.

"Picketing" done in a way to excite no reasonable alarm, and not to coerce or annoy those who were subject to it, would not be an offence. It was lawful for the defendants to endeavour to persuade persons who had not joined the union to do so, provided that persuasion did not take the shape of coercion and intimidation. But even if abusive language and gestures were not used, if the pickets were so placed, or so acted, by watching the movements of the workpeople and masters, or by black looks, or by any other annoyance, as in the judgment of the jury would be likely.

to have a deterring effect in the minds of ordinary persons, it would be molestation and obstruction against this statute.

The same conduct was again held to be within the statute in the case of *Shelbourne v. Oliver* (4 Cox's M. C. p. 47). The men had all struck except one James. The others, however, agreed to resume work, but upon returning and finding James at work they retired, and sent a deputation from a trades union, who said, in answer to the employer's inquiry why they left off work, "We have come about James; we shall not allow James to work. It is of no use, we have made up our minds; he shall not work, he's a scoundrel. Unless you discharge him your men shall not be allowed to work." The Court held that this language justified the conviction.

But in the case of *Wood v. Bowron* (Cox's M. C. vol. 4, p. 258) the result was different. It appeared that Bowron was a master bricklayer, employed with his men on a building. He had two men, Wood and O'Hare, in his employ, who were members of the United Order of Bricklayers. These two men spoke to two of his men, who immediately took away their tools and ceased to work. This they were at liberty to do by the agreement. Mr. Bowron then asked Barrow and O'Hare why the men had been stopped, and they told him, "You must know it was on account of your apprentices." Shortly afterwards Bowron wrote to Barrow to ask for the reason why his men had been taken away from him, and stating that he had heard it was because he employed too many ap-

prentices. Barrow was the secretary of the association, and Wood was the president. He added, I should like you to let me know what you require me to do. In reply Barrow wrote a letter in these terms :—“At a summoned meeting of the order it was carried unanimously, that no society bricklayer will work for Thomas Bowron until such times as he parts with some of his apprentices, namely, he will be allowed two, and when his oldest arrives to his last year of servitude he will be allowed a third, and until then no society bricklayer will work for Thomas Bowron, and further there will be so much expenses to pay before any society bricklayer will work for Bowron. By order of the society.” Soon afterwards a demand of 18*l.* was made by Wood, who stated that that sum must be paid before they would allow any man to work for Bowron. Barrow was secretary at the meeting from which the above letter emanated. The two men were convicted, but on appeal to the Court of Queen’s Bench the convictions were quashed. It was contended that there was no *threat* within the statute, and that the communication of the resolution to Bowron was *bondā fide* in answer to his own inquiry. In order to explain this judgment it must be borne in mind that the defendants were charged in the following terms—that they did, “by using *certain threats*, force or endeavour to force Thomas Bowron to limit the number of his apprentices.” It was therefore evident that to sustain the conviction there must have been evidence of a threat. When the men left his service no threat had been conveyed to him. The

men having left he inquired (Barrow happening to be present) why they left? Barrow said, "In consequence of your apprentices." "In that," says Lord Chief Justice Cockburn, "I find no threat—certainly no joint threat. Then the master is the next person who moves in the matter. There is no communication made to him *spontaneously* by the association; there are resolutions, but they bear no semblance or guise of expression to intimidate him by means of a threat." After that Bowron himself writes to ask what are the reasons for which the men are withdrawn. Upon that a letter is written by Barrow after a meeting at which Wood presided. Barrow's letter upon the face of it appears to be merely an explanation of how it came to pass that these men had left his employment. It was not for the combination, not for the resolution, that the conviction was obtained. The question was whether the *letter* written under these circumstances amounted to a threat. Under all the circumstances of the case the Chief Justice considered that no threat was used, and that the case was really one of explanation and answer to the master, who was desiring to enter into a negociation, and he thought there was not enough to show that the letter was written *malā fide*. Mr. Justice Shee also said that the letter appeared to him to be only information given at the master's request, and that there was nothing to show they intended to force Bowron to change his mode of business. Mr. Justice Lush put the view of the court very clearly. He said, "Here is an agreement not to work for the master until he reduced the number of his apprentices. Whatever its quality might be at

common law, certainly it is no offence against the statute. . . . When the resolution was not communicated to the master, except in answer to his inquiry, by way of explanation, why these persons had left his employment, and then communicated simply for the purpose of giving that information, it seems to me that it wants the essential elements of a threat."

On comparing this case with the one previously referred to (*Shelbourne v. Oliver*), it is clear that they differ in this important point; in the former, the alleged threat was expressed in reply to a letter of inquiry, and the men had already ceased to work, whereas in the latter case there was a direct statement that "unless you discharge James your men shall not be allowed to work." This distinction is intelligible and clear. But the letter quoted from the report of the case of *Barrow v. Bowron* might certainly bear a less favourable construction, and if the magistrates had clearly found that the defendants, under colour of giving the answer which they did to the application of the master, took advantage of that opportunity to urge that which they knew would amount to a threat, and intended it to operate as a threat, the Queen's Bench would probably have sustained the conviction. The magistrates, however, abstained from doing so; they merely stated the evidence generally, and the Court of Queen's Bench seem to have given the defendants the "benefit of a doubt."

On the other side, there is the new case of *Skinner v. Kitch* (Cox's M. C. vol. 4, p. 388). The defendant was secretary of a local lodge of the general

union of carpenters and joiners. He delivered to the respondent, who was a builder, the following notice:—

“ Mr. William Kitch.

SIR,

I AM requested by the committee of carpenters and joiners to give the men in your employ notice to come out on strike against James Jordan, unless he become a member of the above society—not being in any way disrespectful to you or him, but being compelled by the union and laws.

This notice will be carried out after the 27th inst., unless settled in accordance with the society's laws.

I remain,

Yours most respectfully,

THOMAS SKINNER,

Secretary.”

It was held that the defendant had thereby brought himself within the operation of the 3rd section of the 6 Geo. IV. c. 129, upon which the summons was framed.

The practical comment on these cases is this, that the evil to be complained of and put down under this penal statute is not the privilege of combination, to which the workmen are entitled, but that system of coercion which unhappily they sometimes seek to exercise. They are free to act in concert, provided they will leave the freedom of individuals undisturbed. The object to be secured is perfect liberty of action on both sides. The demand and supply of labour must ultimately settle the value of it, notwithstanding any temporary effect which may be produced by combinations on the side of the employers, and strikes on the part of the men. The statute above quoted was passed to secure as much liberty as possible

in the making of contracts of hiring and labour. Its terms and language are ingeniously varied, so as to meet every contingency that could be thought of; and the main scope of it is to *restrain and prevent bullying* in every form and shape.

CHAP. XX.

CRIMINAL STATUTES RELATING TO COLLIERIES.

By the 7 & 8 Geo. IV. c. xxix. s. 37, it is enacted, that if any person shall steal or sever with intent to steal any coal, or cannel coal, from any mine, bed, or vein thereof, every such offender shall be guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny. The punishment for this offence is imprisonment not exceeding two years, with or without hard labour, and without solitary confinement, not exceeding three months in one year.

By 7 Will. IV. & 1 Vict. c. lxxxix. s. 9, it is enacted that whosoever shall unlawfully and maliciously set fire to any mine of coal, or cannel coal, shall be guilty of felony, and on being convicted thereof shall be liable to be transported for life or not less than 14 years, or to penal servitude for life, or not less than four years, or imprisonment not exceeding three years.

By the 7 & 8 Geo. IV. c. xxx. s. 96, it is enacted, " that if any person shall unlawfully and maliciously cause any water to be conveyed into any mine, or into any subterraneous passage connected therewith, with intent thereby to destroy or damage such mine, or to hinder or delay the working thereof; or shall

with the like intent unlawfully and maliciously pull down, fill up, or obstruct any air-way, water-way, drain, pit, level, or shaft, of or belonging to any mine, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to each such imprisonment: provided always, that this provision shall not extend to any damage committed underground by any owner of any adjoining mine, in working the same, or by any person duly employed in such working."

By sect. 7 it is enacted, "that if any person shall unlawfully and maliciously pull down or destroy, or damage with intent to destroy or to render useless, any steam-engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, waggon-way, or trunk be completed or in an unfinished state, every such offender shall be guilty of felony; and being convicted thereof shall be liable to any of the punishments which the court may award as herein-before last mentioned."

By the 23 Vict. c. 29, it is enacted that "if any person shall unlawfully and maliciously pull down or destroy, or damage with intent to destroy or to render

useless, or shall stop, obstruct, or hinder the working of any steam-engine, or other engine, or of any appliance or apparatus in connexion therewith, for sinking, draining, or working any mine, or for in anywise assisting in the working thereof, with intent thereby to destroy or damage such mine, or to hinder or obstruct or delay the working thereof, every such offender shall be guilty of felony ; and being convicted thereof, shall be liable to any of the punishments which may be awarded for any or either of the offences named in the sixth section of the said recited Act."

This new statute contains the additional words, "or shall stop, obstruct, or hinder the working, &c.," which were not in the Act 7 & 8 Geo. IV. c. xxx., thus constituting a new offence.

The following cases have been decided upon the old statute :—

In the case of *R. v. Norris* (9 C. & P. 241), it was held that where one of the owners of adjoining mines, asserting that an air-way belongs to him, directs his workmen to stop it up, and they acting *bona fide*, and believing that he has a right to give such an order, do so, they are not guilty of felony for stopping up the air-way, even though the master knew that he had no right to it. But if any of the workmen knew that the stopping of the air-way was a malicious act of his master, such workman would be guilty of felony. It has also been held that if a steam-engine be set in motion without any machinery attached to it, with intent to damage it or render it useless, the case is within the statute.

In the case of *R. v. Whittingham* (9 C. & P. 234), it was held that damaging a drum moved by a steam-engine is not damaging the steam-engine. But damaging a scaffolding placed across the shaft of a mine is damaging an "erection" used in conducting the business of a mine. And from the case of *R. v. Foster* (4 Cox's C. C. 25), tried before Mr. Baron Platt, it appears that it is not necessary to prove express malice under the statute, for everything wilfully done, if injurious, must be inferred to be done with malice. It was also held that the "silling" beneath an engine in an iron-work is part of the machinery, and that a displacement, dislocation, or disarrangement by force of a machine is within the Act, although the injury be trifling and the working is not thereby prevented.

Lastly, by the 39 & 40 Geo. III. c. lxxvii. s. 4, it is enacted, that if any person shall wall or stack any coal, &c. in any fraudulent manner with intent to deceive his employer, he is liable, on conviction, to be punished in the manner prescribed by this section, which is fully set out on p. 153 of this work.

CHAP. XXI.

INSPECTION OF COLLIERIES.

THE various statutes which taken together formed the code of collieries and colliers have been repealed, and all regulations concerning them are now consolidated in the new Act, 35 & 36 Victoria, chapter 76. A slight sketch of the enactments contained in it has been given in the preface to the present edition. It comes into operation on the 1st of January, 1873, and is so important that it is here inserted verbatim.

AN ACT FOR THE REGULATION AND INSPECTION OF
MINES.

35 & 36 Victoria, chapter 76.
1872.

WHEREAS it is expedient to consolidate and amend the law relating to the regulation and inspection of coal mines and certain other mines :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. *Preliminary.—1. This Act may be cited as “The Coal Mines Regulation Act, 1872.”*

2. This Act, except as herein-after provided, shall not come into operation in England and Scotland until the first day of January one thousand eight hundred and seventy-three, and in Ireland until the first day of January one thousand eight hundred and seventy-four, which dates are in this Act respectively referred to as the commencement of this Act.

3. This Act shall apply to mines of coal, mines of stratified iron-stone, mines of shale, and mines of fire-clay.

PART I.

Employment of Women, Young Persons, and Children.

4. No boy under the age of ten years, and no woman or girl of any age, shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground.

5. A boy of the age of ten and under the age of twelve years shall not be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground, except in a mine in which a Secretary of State, by reason of the thinness of the seams of such mine, considers such employment necessary, and by order, published as he may think fit, for the time being allows the same, nor in such case

- (a) for more than six days in any one week; or,
- (b) if he is employed for more than three days in any one week for more than six hours in any one day; or,
- (c) in any other case for more than ten hours in any one day; or,

(d) otherwise than in accordance with the regulations herein-after contained.

Hours of employment of boys and male young persons in mines.

6. A boy of the age of twelve and under the age of thirteen years, and a male young person under the age of sixteen years, shall not be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground for more than fifty-four hours in any one week, or more than ten hours in any one day, or otherwise than in accordance with the regulations herein-after contained.

Regulations as to employment of boys and male young persons.

7. For the purpose of the provisions of this Act with respect to the employment of boys and male young persons in a mine below ground, the following regulations shall have effect; that is to say,

(1) There shall be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than twelve hours between each period of employment:

(2) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface:

(3) A week shall be deemed to begin at midnight on Saturday night, and to end at midnight on the succeeding Saturday night.

8. The following regulations shall have effect with respect to boys of the age of ten and under the age of twelve years employed in any mine to which this Act applies below ground:

(1) Every such boy shall attend school for at least

Regulations as to education with respect to boys.

twenty hours in every two weeks during which he is so employed :

(2) In computing for the purpose of this Act the time during which a boy has attended school, there shall not be included any time during which such boy has attended either,

- (a) in excess of three hours at any one time, or in excess of five hours on any one day, or in excess of twelve hours in any one week ; or
- (b) on Sundays ; or
- (c) before eight o'clock in the morning or after six o'clock in the evening :

Provided that the non-attendance of any boy at school shall be excused—

- (1) For any time during which he is certified by the principal teacher of the school to have been prevented from attendance by sickness or other unavoidable cause ;
- (2) For any time during which the school is closed for the customary holidays, or for some other temporary cause ; and
- (3) For any time during which there is no school which the boy can attend within two miles (measured according to the nearest road) from the residence of such boy or the mine in which he works.

The immediate employer of a boy in every mine to which this Act applies, who has employed such boy for any time amounting in the whole to not less than fourteen days, shall on Monday in every week during the employment of such boy obtain from the prin-

cipal teacher of some school a certificate that the boy so employed has in manner required by this Act attended school during the preceding week, if attendance at school was so required during that week.

The certificate may be in such form as a Secretary of State may from time to time prescribe.

The immediate employer, where he is not the owner, agent, or manager of the mine, shall deliver such certificate to the owner, agent, or manager of the mine, and the owner, agent, or manager shall obtain the delivery of such certificate, and shall keep any certificate obtained or delivered in pursuance of this section for six months in the office at the mine, and shall produce the same to any inspector under this Act at all reasonable times when required by him during that period, and allow him to inspect and copy the same.

Every person who forges or counterfeits any certificate required by this section, or gives or signs any such certificate falsely, or wilfully makes use of any forged, counterfeit, or false certificate, shall be liable on conviction to imprisonment for a period not exceeding three months, with or without hard labour.

On application of teacher, employer to pay sum for schooling of boy and deduct it from wages.

9. The principal teacher of a school which is attended by any boy employed in a mine to which this Act applies may apply in writing to the person who pays the wages of such boy to pay such sum as herein-after mentioned on account of any boy in respect of whom he may have duly granted a certificate in pursuance of this Act, and after the date of such application, such person, so long as he employs the boy, shall pay to the principal teacher of the said

school, for every week that the boy attends that school, the weekly sum specified in the application, not exceeding twopence per week, and not exceeding one twelfth part of the wages of the boy, and may deduct the sum so paid by him from the wages payable for the services of such boy.

Any person who after such application refuses to pay on demand any sum that may become due as aforesaid shall be liable to a penalty not exceeding ten shillings.

10. If an inspector under this Act is satisfied by inspection of a school or otherwise, that the principal teacher of a school who grants certificates of school attendance required under this Act ought to be disqualified for granting such certificates for any of the following reasons; namely,

- (1) Because he is unfit to instruct children by reason either of his ignorance or neglect, or of his not having the necessary books and materials :
- (2) Because of his immoral conduct : or,
- (3) Because of his continued neglect to fill up proper certificates of school attendance :

in any such case he may serve on the teacher a written notice stating the reason for such disqualification. At the expiration of two weeks from the date of such notice the teacher shall, subject to the appeal herein-after mentioned, be disqualified for granting certificates.

The inspector shall, so far as he can, serve on every employer of a child who obtains certificates from such teacher a notice to the like effect as the notice served

on the teacher, and also specifying a school which the child employed by such employer can attend within two miles (measured according to the nearest road) from the place of employment or the residence of the child.

Any teacher who is disqualified as aforesaid, and any employer who obtains certificates from him, may within three weeks after the service of the notice on the teacher, appeal therefrom to the Education Department, who may confirm or reverse such disqualification.

After a teacher is disqualified for granting certificates, no certificate given by him shall be deemed to be a certificate in compliance with this Act, unless in the case of there being no other school which the child employed in a mine can attend within two miles (measured according to the nearest road) from the mine or the residence of such child, or unless with the written consent of an inspector under this Act.

The inspectors under this Act shall in their reports to a Secretary of State report the name of every teacher disqualified under this section during the preceding twelve months, the name of the school at which he taught, and such last-mentioned report shall be communicated to the Committee of Council on Education.

11. The following regulation shall apply to every boy of ten and under twelve years of age, employed below ground in any mine to which this Act applies:

The parent, guardian, or person having the custody of or control over any such boy shall cause him to attend school in accordance with the regulations of this Act:

Penalty for
non-attend-
ance of
children at
school.

Every such parent, guardian, or person who wilfully fails to act in conformity with this section, shall be liable to a penalty of not more than twenty shillings for each offence.

12. With respect to women, young persons, and children employed above ground, in connexion with any mine to which this Act applies, the following provisions shall have effect:

(1) No child under the age of ten years shall be so employed:

(2) The regulations of this Act with respect to boys of ten and under twelve years of age shall apply to every child so employed:

(3) The regulations of this Act with respect to male young persons under sixteen years of age shall apply to every woman and young person so employed:

(4) No woman, young person, or child shall be so employed between the hours of nine at night and five on the following morning, or on Sunday, or after two o'clock on Saturday afternoon:

(5) Intervals for meals shall be allowed to every woman, young person, and child so employed, amounting in the whole to not less than half an hour during each period of employment which exceeds five hours, and to not less than one hour and a half during each period of employment which exceeds eight hours.

The provisions of this clause as to the employment of women, young persons, and children after two

o'clock on Saturday afternoon shall not apply in the case of any mine in Ireland, so long as it is exempted in writing by a Secretary of State.

Register to
be kept by
owner, &c.,
of boys and
male young
persons em-
ployed in
mines.

13. The owner, agent, or manager of every mine to which this Act applies shall keep in the office at the mine a register, and shall cause to be entered in such register the name, age, residence, and date of first employment of all boys under the age of twelve years, and of the age of twelve and under the age of thirteen years, and of all male young persons under the age of sixteen years who are employed in the mine below ground, and of all women, young persons, and children employed above ground in connexion with the mine, and a memorandum of the certificates of the school attendance of such boys obtained in pursuance of this Act, and shall produce such register to any inspector under this Act, at the mine at all reasonable times when required by him, and allow him to inspect and copy the same.

The immediate employer of every boy or male young person of the ages aforesaid, other than the owner, agent, or manager of the mine, before he causes such boy or male young person to be in any mine to which this Act applies below ground, shall report to the manager of such mine, or some person appointed by such manager, that he is about to employ him in such mine.

As to em-
ployment of
young per-
sons under
18 about
engines.

14. Where there is a shaft or an inclined plane or level in any mine to which this Act applies, whether for the purpose of an entrance to such mine or of a communication from one part to another part of such mine, and persons are taken up or down or along

such shaft, plane, or level by means of any engine, windlass, or gin, driven or worked by steam or any mechanical power, or by an animal, or by manual labour, a person shall not be allowed to have charge of such engine, windlass, or gin, or of any part of the machinery, ropes, chains, or tackle connected therewith, unless he is a male of at least eighteen years of age.

Where the engine, windlass, or gin is worked by an animal, the person under whose direction the driver of the animal acts shall, for the purposes of this section, be deemed to be the person in charge of the engine, windlass, or gin, but such driver shall not be under twelve years of age.

15. If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, any provision of this Act with respect to the employment of women, girls, young persons, boys, or children, or to the attendance of boys at school, or to the register of boys and male young persons, or of women, young persons, and children, or to the reporting the intended employment of boys or male young persons, or to the employment of persons about any engine, windlass, or gin, he shall be guilty of an offence against this Act ; and in case of any such contravention or non-compliance by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this Act to prevent such contravention or non-compliance.

Penalty for
employment
of persons in
contraven-
tion of pro-
visions of
this Act.

If it appear that a child, boy, or young person, or a person employed about an engine, windlass, or gin, was employed on the representation of his parent or guardian that he was of that age at which his employment would not be in contravention of this Act, and under the belief in good faith that he was of that age, the owner, agent, or manager of the mine and employer shall be exempted from any penalty, and the parent or guardian shall, for such misrepresentation, be deemed guilty of an offence against this Act.

Prohibition
of payment
of wages at
public
houses, &c.

Wages.—16. No wages shall be paid to any person employed in or about any mine to which this Act applies at or within any public house, beer shop, or place for the sale of any spirits, beer, wine, cyder, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto, or occupied therewith.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this section shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention or non-compliance.

As to pay-
ment of
persons
employed in

17. Where the amount of wages paid to any of the persons employed in a mine to which this Act applies depends on the amount of mineral gotten by

them, such persons shall, after the first day of August one thousand eight hundred and seventy-three, unless the mine is exempted by a Secretary of State, be paid according to the weight of the mineral gotten by them, and such mineral shall be truly weighed accordingly.

Provided always, that nothing herein contained shall preclude the owner, agent, or manager of the mine from agreeing with the persons employed in such mine that deductions shall be made in respect of stones or materials other than mineral contracted to be gotten, which shall be sent out of the mine with the mineral contracted to be gotten, or in respect of any tubs, baskets, or hutches being improperly filled in those cases where they are filled by the getter of the mineral or his drawer, or by the person immediately employed by him, such deductions being determined by the banksman or weigher and check weigher (if there be one), or in case of difference by a third party to be mutually agreed on by the owner, agent, or manager of the mine on the one hand, and the persons employed in the mine on the other.

Where it is proved to the satisfaction of a Secretary of State that by reason of any exigencies existing in the case of any mine or class of mines to which the foregoing provision in this section applies, it is requisite or expedient that the persons employed in such mine or class of mines should not be paid by the weight of the mineral gotten by them, or that the beginning of such payment by weight should be postponed, such Secretary of State may, if he think fit, by order exempt such mine or class of mines from

the provisions of this section, either without condition or during the time and upon the conditions specified in the order, or postpone in such mine or class of mines the beginning of such payment by weight, and may from time to time revoke or alter any such order.

If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section, he shall be guilty of an offence against this Act ; and in the event of any contravention of or non-compliance with this section by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention and non-compliance.

Appoint-
ment and
removal of
check
weigher on
part of men.

18. The persons who are employed in a mine to which this Act applies, and are paid according to the weight of the mineral gotten by them, may, at their own cost, station a person (in this Act referred to as "a check weigher") at the place appointed for the weighing of such mineral, in order to take an account of the weight thereof on behalf of the persons by whom he is so stationed. The check weigher shall be one of the persons employed either in the mine at which he is so stationed or in another mine belonging to the owner of that mine. He shall have every facility afforded to him to take a correct account of the weighing for the persons by whom he is so stationed ; and if in any mine proper facilities are not afforded to the check weigher as required by this

section, the owner, agent, and manager of such mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by enforcing to the best of his power the provisions of this section to prevent such contravention or non-compliance.

The check weigher shall not be authorised in any way to impede or interrupt the working of the mine, or to interfere with the weighing, but shall be authorised only to take such account as aforesaid, and the absence of the check weigher shall not be a reason for interrupting or delaying such weighing.

If the owner, agent, or manager of the mine desires the removal of a check weigher on the ground that such check weigher has impeded or interrupted the working of the mine, or interfered with the weighing, or has otherwise misconducted himself, he may complain to any court of summary jurisdiction, who, if of opinion that the owner, agent, or manager shows sufficient *prima facie* ground for the removal of such check weigher, shall call upon the check weigher to show cause against his removal. On the hearing of the case the court shall hear the parties, and, if they think that at the hearing sufficient ground is shown by the owner, agent, or manager to justify the removal of the check weigher, shall make a summary order for his removal, and the check weigher shall thereupon be removed, but without prejudice to the stationing of another check weigher in his place.

The court may in every case make such order as to the costs of the proceedings as they think just.

If in pursuance of any order of exemption made

by a Secretary of State, the persons employed in a mine to which this Act applies are paid by the measure or gauge of the material gotten by them, the provisions of this section shall apply in like manner as if the term "weighing" included measuring and gauging, and the terms relating to weighing shall be construed accordingly.

Application
of Weights
and Mea-
sures Act to
weights used
in mines, &c.

19. The Weights and Measures Act, or any Act for the time being in force relating to weights and measures, shall apply to the weights used in any mine to which this Act applies for determining the wages payable to any person employed in such mine according to the weight of the mineral gotten by such person, in like manner as it applies to weights used for the sale of any article, and the inspector of weights and measures for the district appointed under the said Act shall accordingly from time to time, but without unnecessarily impeding or interrupting the working of the mine, inspect and examine, in manner directed by the said Act, the weighing machines and weights used for mines to which this Act applies, or the measures or gauges used for such mines: Provided that nothing in this section shall prevent the use of the measures and gauges ordinarily used in such mine.

The term "Weights and Measures Act" in this section means—

(a) As to Great Britain, the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter sixty-three, "to repeal an Act of the fourth and fifth years of His present

Majesty relating to weights and measures, and to make other provisions instead thereof ; " and,

(b) As to Ireland, the Weights and Measures (Ireland) Amendment Act, 1862, as amended by the Act of the session of the thirtieth and thirty-first years of the reign of Her present Majesty, chapter ninety-four, "to provide for the inspection of weights and measures, and to regulate the law relating thereto in certain parts of the police district of Dublin Metropolis."

Single Shafts.—20. After the commencement of this Act the owner, agent, or manager of a mine to which this Act applies shall not employ any person in such mine, or permit any person to be in such mine for the purpose of employment therein, unless there are in communication with every seam of such mine for the time being at work at least two shafts or outlets, separated by natural strata of not less than ten feet in breadth, by which shafts or outlets distinct means of ingress and egress are available to the persons employed in such seam, whether such two shafts or outlets belong to the same mine, or one or more of them belong to another mine, and unless there is a communication of not less than four feet wide and three feet high between such two shafts or outlets, and unless there is at each of such two shafts or outlets or upon the works belonging to the mine and either in actual use or available for use within a reasonable time proper apparatus for raising and lowering persons at each such shaft or outlet.

Provided that such separation shall not be deemed incomplete by reason only that openings through the strata between the two shafts or outlets have been made for temporary purposes of ventilation, drainage, or otherwise; or in the case of mines where inflammable gas has not been found within the preceding twelve months for the same purposes although not temporary.

Every owner, agent, and manager of a mine who acts in contravention of, or fails to comply with, this section shall be guilty of an offence against this Act.

Any of Her Majesty's superior courts of law or equity, whether any other proceedings have or have not been taken, may, upon the application of the Attorney General, prohibit by injunction the working of any mine in which any person is employed, or is permitted to be for the purpose of employment, in contravention of this section, and may award such costs in the matter of the injunction as the court thinks just; but this provision shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this Act.

Written notice of the intention to apply for such injunction in respect of any mine shall be given to the owner, agent, or manager of such mine not less than ten days before the application is made.

Agreements
in contra-
vention of
this Act
illegal.

21. No persons shall be precluded by any agreement from doing such acts as may be necessary for providing a second shaft or outlet to a mine, where the same is required by this Act, or be liable under any contract to any penalty or forfeiture for doing

such acts as may be necessary in order to comply with the provisions of this Act with respect to shafts or outlets.

22. The provisions of this Act with respect to shafts or outlets shall not apply in the following cases ; that is to say,

(1) In the case either of opening a new mine for

the purpose of searching for or proving minerals, or of any working for the purpose of making a communication between two or more shafts, so long as not more than twenty persons are employed below ground at any one time in the whole of the different seams in connexion with each shaft or outlet in such new mine or such working :

(2) In the case of any proved mine so long as it is exempted in writing by a Secretary of State on the ground either—

(a) that the quantity of mineral proved is not sufficient to repay the outlay which would be occasioned by the sinking or making of a second shaft or outlet, or

(b) the mine is not a coal mine, or mine with inflammable gas, that sufficient provision has been made against danger from other causes than explosions of gas by using stone, brick, or iron in the place of wood for the lining of the shaft and the construction of the mid wall ; or

(c) that the workings in any seam of a mine have reached the boundary of the pro-

Exceptions
from provi-
sions as to
single shafts.

perty or other extremity of the mineral field of which such seam is a part, and that it is expedient to work away the pillars already formed in course of the ordinary working, notwithstanding that one of the shafts or outlets may be cut off by so working away the pillars of such seam;

and so long as there are not employed below ground at any one time in the whole of the different seams in connexion with the shaft or outlet in any such mine, more than twenty persons, or (if the mine is not a coal mine, or mine with inflammable gas) than such larger number of persons as may for the time being be allowed by a Secretary of State:

(3) In the case of any mine one of the shafts or outlets of which has become, by reason of some accident, unavailable for the use of the persons employed in the mine, so long as such mine is exempted in writing by a Secretary of State, and as the conditions on which such exemption is granted are duly observed.

Temporary exception from provisions as to single shafts.

23. The provisions of this Act with respect to shafts or outlets shall not, until the first day of January, one thousand eight hundred and seventy-five, apply to any mine which is not at the passing of this Act required to have two shafts or outlets.

Exemption of certain mines as to

24. If a written representation is made to a Secretary of State by the owner or agent of a mine not

required at the passing of this Act to have two shafts ^{shafts, and extension of time for other mines.} or outlets, either—

- (1) Within six months after the commencement of this Act, alleging that by reason of the mine being nearly exhausted he ought to be exempted from the obligation of providing an additional shaft or outlet in pursuance of this Act ; or,
- (2) Within six months immediately preceding the first day of January, one thousand eight hundred and seventy-five, alleging that an extension of time for providing an additional shaft or outlet ought to be granted to him :

the question as to whether such exemption or extension of time ought to be granted shall be referred to arbitration, and the date of the receipt of such representation by a Secretary of State shall be deemed to be the date of the reference, and the award made upon such arbitration may exempt the owner of such mine from the obligation of providing an additional shaft or outlet, and may grant to the owner of such other mine as aforesaid such extension of time as may be specified by the award ; but if the result of the arbitration is against the owner or agent, or if no award is made by reason of any default or neglect on the part of the owner or agent, the owner or agent shall be bound by the provisions of this Act as if this section had not been enacted.

Division of Mine into Parts.—25. Where two or more parts of a mine are worked separately the owner or agent of such mine may give notice in

writing to that effect to the inspector of the district, and thereupon each such part shall, for all the purposes of this Act, be deemed to be a separate mine.

If a Secretary of State is of opinion that the division of a mine in pursuance of this section tends to lead to the evasion of the provisions of this Act, or otherwise to prevent the carrying of this Act into effect, he may object to such division by notice served on the owner or agent of the mine; and such owner or agent, if he decline to acquiesce in such objection, may, within twenty days after the receipt of such notice, send a notice to the inspector of the district stating that he declines so to acquiesce, and thereupon the matter shall be determined by arbitration in manner provided by this Act; and the date of the receipt of the last-mentioned notice shall be deemed to be the date of the reference.

Appoint-
ment of
manager
to mine.

Certificated Managers.—26. Every mine to which this Act applies shall be under the control and daily supervision of a manager, and the owner or agent of every such mine shall nominate himself or some other person (not being a contractor for getting the mineral in such mine, or a person in the employ of such contractor) to be the manager of such mine, and shall send written notice to the inspector of the district of the name and address of such manager.

A person shall not be qualified to be a manager of a mine to which this Act applies unless he is for the time being registered as the holder of a certificate under this Act.

If any mine to which this Act applies is worked

for more than fourteen days without there being such a manager for that mine as is required by this section, the owner and agent of such mine shall each be liable to a penalty not exceeding fifty pounds, and to a further penalty not exceeding ten pounds for every day during which such mine is so worked.

Provided that—

- (a) The owner of such mine shall not be liable to any such penalty if he prove that he had taken all reasonable means by the enforcement of this section to prevent the mine being worked in contravention of this section:
- (b) If for any reasonable cause there is for the time being no manager of a mine qualified as required by this section, the owner or agent of such mine may appoint any competent person not holding a certificate under this Act to be manager, for a period not exceeding two months, or such longer period as may elapse before such person has an opportunity of obtaining by examination a certificate under this Act, and shall send to the inspector of the district a written notice of the name and address of such manager, and of the reason of his appointment; and
- (c) A mine in which less than thirty persons are ordinarily employed below ground, or of which the average daily out-put does not exceed twenty-five tons, shall be exempt from the provisions of this sec-

tion, unless the inspector of the district, by notice in writing served on the owner or agent of such mine, requires the same to be under the control of a manager.

27. For the purpose of granting in any part of the United Kingdom, to be from time to time defined by an order in writing made by a Secretary of State, certificates of competency to managers of mines for the purposes of this Act, examiners shall be appointed by a board constituted as herein-after mentioned.

A Secretary of State may from time to time appoint, remove, and re-appoint fit persons to form such board as follows; namely, three persons being owners of mines to which this Act applies in the said part of the United Kingdom, and three persons employed in or about a mine to which this Act applies in the said part of the United Kingdom, not being owners, agents, or managers of a mine, and three persons practising as mining engineers, agents, or managers of mines, or coal viewers in the said part of the United Kingdom, and one inspector under this Act; the persons so appointed shall during the pleasure of the Secretary of State form the board for the purposes of the said examinations in the said part of the United Kingdom.

28. The proceedings of the board shall be in accordance with the rules contained in Schedule Two to this Act; the board shall from time to time appoint examiners, not being members of the board, except with the consent of the Secretary of State, to conduct the examinations in the part of the United Kingdom.

Appointment of examiners for granting certificates of competency to managers.

Constitution and powers of board for appointing examiners.

for which such board acts, of applicants for certificates of competency under this Act, and may from time to time make, alter, and revoke rules as to the conduct of such examinations and the qualifications of the applicants, so, however, that in every such examination regard shall be had to such knowledge as is necessary for the practical working of mines in the said part of the United Kingdom; every such board shall make from time to time to a Secretary of State a report and return of their proceedings, and of such other matters as a Secretary of State may from time to time require.

29. A Secretary of State may from time to time make, alter, and revoke rules as to the places and times of examinations of applicants for certificates of competency under this Act, the number and remuneration of the examiners, and the fees to be paid by the applicants, so that the fees do not exceed those specified in Schedule One to this Act. Every such rule shall be duly observed by every board appointed under this Act to whom it applies.

30. A Secretary of State shall deliver to every applicant who is duly reported by the examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and good conduct, such a certificate of competency as the case requires. The certificate shall be in such form as a Secretary of State from time to time directs, and a register of the holders of such certificates shall be kept by such person and in such manner as a Secretary of State from time to time directs.

Grant of certificates of service to existing managers.

31. Certificates of service for the purposes of this Act shall be granted by a Secretary of State to every person who satisfies him either that before the passing of this Act he was acting, and has since that day acted, or that he has at any time within five years before the passing of this Act for a period of not less than twelve months acted, in the capacity of a manager of a mine or such part of a mine as can under this Act be made a separate mine for the purposes of this Act.

Every such certificate of service shall contain particulars of the name, place, and time of birth, and the length and nature of the previous service of the person to whom the same is delivered, and a certificate of service may be refused to any person who fails to give a full and satisfactory account of the particulars aforesaid, or to pay such registration fee as the Secretary of State may direct, not exceeding that mentioned in Schedule One to this Act.

A certificate of service shall have the same effect for the purposes of this Act as a certificate of competency granted under this Act.

Inquiry into competency of manager, and cancellation of certificate in case of unfitness.

32. If at any time representation is made to a Secretary of State by an inspector or otherwise, that any manager holding a certificate under this Act is by reason of incompetency or gross negligence unfit to discharge his duties, or has been convicted of an offence against this Act, the Secretary of State may, if he think fit, cause inquiry to be made into the conduct of such manager, and with respect to such inquiry the following provisions shall have effect:

(1) The inquiry shall be public, and shall be held

at such place as the Secretary of State may appoint by such county court judge, metropolitan police magistrate, stipendiary magistrate, or other person or persons, as may be directed by the Secretary of State, and either alone or with the assistance of any assessor or assessors named by the Secretary of State:

- (2) The Secretary of State shall, before the commencement of the inquiry, furnish to the manager a statement of the case upon which the inquiry is instituted:
- (3) Some person appointed by the Secretary of State shall undertake the management of the case:
- (4) The manager may attend the inquiry by himself, his counsel, attorney, or agent, and may, if he think fit, be sworn and examined as an ordinary witness in the case:
- (5) The persons appointed to hold the inquiry, in this Act referred to as the court, shall, upon the conclusion of the inquiry, send to the Secretary of State a report containing a full statement of the case, and their opinion thereon, and such report of, or extracts from the evidence, as the court think fit:
- (6) The court shall have power to cancel or suspend the certificate of the manager, if they find that he is by reason of incompetency or gross negligence, or of his having been convicted of an offence against this Act, unfit to discharge his duty.

Expenses
and fees how
to be
defrayed.

36. All expenses incurred by a Secretary of State with the concurrence of the Commissioners of Her Majesty's Treasury in carrying into effect the provisions of this Act with respect to certificates of competency or service shall be defrayed out of moneys provided by Parliament.

All fees payable by the applicants for examination for or for a copy of a certificate under this Act shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct, and be carried to the Consolidated Fund.

Penalty for
forgery of a
false decla-
ration as to
certificate.

37. Every person who commits any of the following offences, that is to say,

- (1) Forges, or counterfeits, or knowingly makes any false statement in any certificate of competency or service under this Act, or any official copy of such certificate; or
- (2) Knowingly utters or uses any such certificate or copy which has been forged or counterfeited or contains any false statement; or
- (3) For the purpose of obtaining, for himself or any other person, employment as a certificated manager, or the grant, renewal, or restoration of any certificate under this Act, or a copy thereof, either
 - (a) makes or gives any declaration, representation, statement, or evidence which is false in any particular, or
 - (b) knowingly utters, produces, or makes use of any such declaration, representation, statement, or evidence, or any document containing the same, shall be guilty of a

misdemeanour, and be liable on conviction to imprisonment for a term not exceeding two years, with or without hard labour.

38. *Returns, Notices, and Abandonment.*—On or before the first day of February in every year the owner, agent, or manager of every mine to which this Act applies shall send to the inspector of the district on behalf of a Secretary of State a correct return, specifying, with respect to the year ending on the preceding thirty-first day of December, the quantity of coal or other mineral wrought in such mine, and the number of persons ordinarily employed in or about such mine below ground and above ground, distinguishing the persons employed below ground and above ground, and the different classes and ages of the persons so employed whose hours of labour are regulated by this Act.

The return shall be in such form as may be from time to time prescribed by a Secretary of State, and the inspector of the district on behalf of a Secretary of State shall from time to time on application furnish forms for the purpose of such return.

The Secretary of State may publish the aggregate results of such returns with respect to any particular county or inspector's district, or any large portion of a county or inspector's district, but the individual return shall not be published without the consent of the person making the same, or of the owner of the mine to which they relate, and no person except an inspector or Secretary of State shall be entitled, without such consent, to see the same.

Every owner, agent, or manager of a mine who fails to comply with this section or makes any return which is to his knowledge false in any particular shall be guilty of an offence against this Act.

Notice to be given of accidents in mines.

39. Where in or about any mine to which this Act applies, whether above or below ground, either

(1) loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder, or of any steam boiler; or

(2) loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever, the owner, agent, or manager of the mine shall, within twenty-four hours next after the explosion or accident, send notice in writing of the explosion or accident and of the loss of life or personal injury occasioned thereby to the inspector of the district on behalf of a Secretary of State, and shall specify in such notice the character of the explosion or accident, and the number of persons killed and injured respectively.

Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the inspector of the district on behalf of a Secretary of State within twenty-four hours after such death comes to the knowledge of the owner, agent, or manager.

Every owner, agent, or manager who fails to act in compliance with this section shall be guilty of an offence against this Act.

40. In any of the following cases, namely,

- (1) Where any working is commenced for the purpose of opening a new shaft for any mine to which this Act applies ;
- (2) Where a shaft of any mine to which this Act applies is abandoned or the working thereof discontinued ;
- (3) Where the working of a shaft of any mine to which this Act applies is recommenced after any abandonment or discontinuance for a period exceeding two months ; or
- (4) Where any change occurs in the name of, or in the name of the owner, agent, or manager of, any mine to which this Act applies, or in the officers of any incorporated company which is the owner of a mine to which this Act applies,

the owner, agent, or manager of such mine shall give notice thereof to the inspector of the district within two months after such commencement, abandonment, discontinuance, recommencement, or change, and if such notice is not given the owner, agent, or manager shall be guilty of an offence against this Act.

41. Where any mine to which this Act applies is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred, the owner thereof, and every other person interested in the minerals of such mine, shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents :

Provided that—

Notice to be given of opening and abandonment of mine.

(1) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect :

(2) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

If any person fail to act in conformity with this section, he shall be guilty of an offence against this Act.

Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or uninclosed land, shall be deemed to be a nuisance within the meaning of section eight of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866.

Plans of
abandoned
mines to be
sent to
Secretary of
State.

42. Where any mine to which this Act applies is abandoned, the owner of such mine at the time of such abandonment shall, within three months after such abandonment, send to a Secretary of State an accurate plan on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan used in the mine at the time of such abandonment is constructed on, showing the boundaries of the workings of such mine up to the time of the abandonment, with the view of its being preserved under the care of the Secretary of State, but no

person, except an inspector under this Act, shall be entitled, without the consent of the owner of the mine, to see such plan when so sent until after the lapse of ten years from the time of such abandonment.

Every person who fails to comply with this section shall be guilty of an offence against this Act.

43. *Inspection.*—A Secretary of State may from time to time appoint any fit persons to be inspectors of mines to which this Act applies, and assign them their duties, and may award them such salaries as the Commissioners of Her Majesty's Treasury may approve, and may remove such inspectors.

Notice of the appointment of every such inspector shall be published in the London Gazette.

Any such inspector is referred to in this Act as an inspector, and the inspector of a district means the inspector who is for the time being assigned to the district or portion of the United Kingdom with reference to which the term is used.

Any person appointed or acting as inspector under the Metalliferous Mines Regulation Act, 1872, if directed by a Secretary of State to act as an inspector under this Act, may so act, and shall be deemed to be an inspector under this Act.

44. Any person who practises or acts or is a partner of any person who practises or acts as a land agent or mining engineer, or as a manager, viewer, agent, or valuer of mines, or arbitrator in any difference arising between owners, agents, or managers of mines, or is otherwise employed in or about any mine (whether such mine is one to which this Act applies

Appoint-
ment of
inspectors of
mines.

Disqualifica-
tion of per-
sons as
inspectors.

or not), shall not act as inspector of mines under this Act.

Powers of inspectors.

45. An inspector under this Act shall have power to do all or any of the following things ; namely,

- (1) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine to which this Act applies :
- (2) To enter, inspect, and examine any mine to which this Act applies, and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the said mine :
- (3) To examine into and make inquiry respecting the state and condition of any mine to which this Act applies, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto :
- (4) To exercise such other powers as may be necessary for carrying this Act into effect.

Every person who wilfully obstructs any inspector in the execution of his duty under this Act, and every owner, agent, and manager of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry, inspection, examination, or inquiry under this Act, in relation to

such mine, shall be guilty of an offence against this Act.

46. If in any respect (which is not provided against by any express provision of this Act, or by any special rule) any inspector find any mine to which this Act applies, or any part thereof, or any matter, thing, or practice in or connected with any such mine, to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, such inspector may give notice in writing thereof to the owner, agent, or manager of the mine, and shall state in such notice the particulars in which he considers such mine, or any part thereof, or any matter, thing, or practice, to be dangerous or defective, and require the same to be remedied ; and unless the same be forthwith remedied the inspector shall also report the same to a Secretary of State.

If the owner, agent, or manager of the mine objects to remedy the matter complained of in the notice he may, within twenty days after the receipt of such notice, send his objection in writing, stating the grounds thereof, to a Secretary of State ; and thereupon the matter shall be determined by arbitration in manner provided by this Act ; and the date of the receipt of such objection shall be deemed to be the date of the reference.

If the owner, agent, or manager fail to comply either with the requisition of the notice, where no objection is sent within the time aforesaid, or with the award made on arbitration, within twenty days after the expiration of the time for objection or the time of making of the award (as the case may be), he

Notice by
inspectors of
causes of
danger not
provided for
by the rules.

shall be guilty of an offence against this Act, and the notice and award shall respectively be deemed to be written notice of such offence.

Provided that the court, if satisfied that the owner, agent, or manager has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing such offence, and, if the works are completed within a reasonable time, no penalty shall be inflicted.

No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract to any penalty or forfeiture for doing such acts.

47. The owner, agent, or manager of every mine to which this Act applies shall keep in the office at the mine an accurate plan of the workings of such mine, and showing the workings up to at least six months previously.

The owner, agent, or manager of the mine shall produce to an inspector under this Act at the mine, such plan, and shall, if requested by the inspector, mark on such plan the progress of the workings of the mine up to the time of such production, and shall allow the inspector to examine the same; but the inspector is not hereby authorised to make a copy of any part of such plan.

If the owner, agent, or manager of any mine to which this Act applies fails to keep such plan as prescribed by this section, or wilfully refuses to produce

Plans of
mines to be
kept by
owner, &c.

or allow to be examined such plan, or wilfully withholds any portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection, or inaccuracy, he shall be guilty of an offence against this Act; and, further, the inspector may, by notice in writing (whether a penalty for such offence has or has not been inflicted), require the owner, agent, or manager to cause an accurate plan, such as is prescribed by this section, to be made within a reasonable time, at the expense of the owner of the mine, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan then used in the mine is constructed on.

If the owner, agent, or manager fail within twenty days, or such further time as may be shown to be necessary, after the requisition of the inspector to make or cause to be made such plan, he shall be guilty of an offence against this Act.

48. Every inspector under this Act shall make an annual report of his proceedings during the preceding year to a Secretary of State, which report shall be laid before both Houses of Parliament.

Inspector to make an annual report, and special reports as directed.

A Secretary of State may at any time direct an inspector to make a special report with respect to any accident in a mine to which this Act applies, which accident has caused loss of life or personal injury to any person, and in such case shall cause such report to be made public at such time and in such manner as he thinks expedient.

Provisions
as to arbi-
trations.

Arbitration.—94. With respect to arbitrations under this Act, the following provisions shall have effect :

- (1) The parties to the arbitration are in this section deemed to be the owner, agent, or manager of the mine on the one hand, and the inspector of mines (on behalf of the Secretary of State) on the other :
- (2) Each of the parties to the arbitration may, within twenty-one days after the date of the reference, appoint an arbitrator :
- (3) No person shall act as arbitrator or umpire under this Act who is employed in or in the management of, or is interested in the mine to which the arbitration relates :
- (4) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of such other party :
- (5) The death, removal, or other change in any of the parties to the arbitration shall not affect the proceedings under this section :
- (6) If within the said twenty-one days either of the parties fail to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in such case the award of the single arbitrator shall be final :
- (7) If before an award has been made any arbitrator appointed by either party die or become incapable to act, or for fourteen days

refuse or neglect to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place; and if he fail to do so within fourteen days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matters in difference, and in such case the award of such single arbitrator shall be final:

- (8) In either of the foregoing cases where an arbitrator is empowered to act singly, upon one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had been made:
- (9) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as herein-after mentioned:
- (10) The arbitrators, before they enter upon the matters referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ:
- (11) If the umpire die or become incapable to act before he has made his award, or refuses to

make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place:

- (12) If the arbitrators refuse or fail or for seven days after the request of either party neglect to appoint an umpire, then on the application of either party an umpire shall be appointed by the chairman of the general or quarter sessions of the peace, within the jurisdiction of which the mine is situate:
- (13) The decision of every umpire on the matters referred to him shall be final:
- (14) If a single arbitrator fail to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place:
- (15) The arbitrators and their umpire or any of them may examine the parties and their witnesses on oath; they may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult:
- (16) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties or one of them according as the award may direct. Such costs may be taxed by a master of one of the superior courts, who,

on the written application of either of the parties, shall ascertain and certify the proper amount of such costs. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the owner, agent, or manager may in the event of non-payment be recovered in the same manner as penalties under this Act :

(17) Every person who is appointed an arbitrator or umpire under this section shall be a practical mining engineer, or a person accustomed to the working of mines, but when an award has been made under this section the arbitrator or umpire who made the same shall be deemed to have been duly qualified as provided by this section.

Coroners.—50. With respect to coroners inquests on the bodies of persons whose deaths may have been caused by explosions or accidents in mines to which this Act applies, the following provisions shall have effect :

(1) Where a coroner holds an inquest upon a body of any person whose death may have been caused by any explosion or accident, of which notice is required by this Act to be given to the inspector of the district, the coroner shall adjourn such inquest unless an inspector, or some person on behalf of a Secretary of State, is present to watch the proceedings :

- (2) The coroner, at least four days before holding the adjourned inquest, shall send to the inspector for the district notice in writing of the time and place of holding the adjourned inquest:
- (3) The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof:
- (4) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the inspector of the district notice of the time and place of holding the inquest, not less than forty-eight hours before the time of holding the same, it shall not be imperative on him to adjourn such inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn:
- (5) An inspector shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner:
- (6) Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner shall send to the inspector of the district notice in writing of such neglect or default:
- (7) Any person having a personal interest in or employed in or in the management of the mine in which the explosion or accident occurred

shall not be qualified to serve on the jury empannelled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

PART II.

Rules.

General Rules.—51. The following general rules ^{General rules:} shall be observed, so far as is reasonably practicable, in every mine to which this Act applies:

- (1) An adequate amount of ventilation shall be ^{Ventilation.} constantly produced in every mine, to dilute and render harmless noxious gases to such an extent that the working places of the shafts, levels, stables, and workings of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein.
- (2) In every mine in which inflammable gas has been found within the preceding twelve months, then once in every twenty-four hours if one shift of workmen is employed, and once in every twelve hours if two shifts

are employed during any twenty-four hours, a competent person or competent persons, who shall be appointed for the purpose, shall, before the time for commencing work in any part of the mine, inspect with a safety lamp that part of the mine, and the roadways leading thereto, and shall make a true report of the condition thereof, so far as ventilation is concerned, and a workman shall not go to work in such part until the same and the roadways leading thereto are stated to be safe. Every such report shall be recorded without delay in a book which shall be kept at the mine for the purpose, and shall be signed by the person making the same.

(3) In every mine in which inflammable gas has not been found within the preceding twelve months, then once in every twenty-four hours a competent person or competent persons, who shall be appointed for the purpose, shall, so far as is reasonably practicable immediately before time for commencing work in any part of the mine, inspect that part of the mine and the roadways leading thereto, and shall make a true report of the condition thereof, so far as ventilation is concerned, and a workman shall not go to work in such part until the same and the roadways leading thereto are stated to be safe. Every report shall be recorded without delay in a book which

shall be kept at the mine for the purpose, and shall be signed by the person making the same.

(4) All entrances to any place not in actual course of working and extension, shall be properly fenced across the whole width of such entrance, so as to prevent persons inadvertently entering the same.

(5) A station or stations shall be appointed at the entrance to the mine, or to different parts of the mine, as the case may require, and a workman shall not pass beyond any such station until the mine or part of the mine beyond the same has been inspected and stated to be safe.

(6) If at any time it is found by the person for the time being in charge of the mine or any part thereof that by reason of noxious gases prevailing in such mine or such part thereof, or of any cause whatever, the mine or the said part is dangerous, every workman shall be withdrawn from the mine or such part thereof as is so found dangerous, and a competent person who shall be appointed for the purpose shall inspect the mine or such part thereof as is so found dangerous, and if the danger arises from inflammable gas shall inspect the same with a locked safety lamp, and in every case shall make a true report of the condition of such mine or part thereof, and a workman shall not, except in so far as is necessary for inquiring

into the cause of danger or for the removal thereof, or for exploration, be readmitted into the mine, or such part thereof as was so found dangerous, until the same is stated by such report not to be dangerous. Every such report shall be recorded in a book which shall be kept at the mine for the purpose, and shall be signed by the person making the same.

Safety lamps
and lights.

(7) In every working approaching any place where there is likely to be an accumulation of explosive gas, no lamp or light other than a locked safety lamp shall be allowed or used, and whenever safety lamps are required by this Act, or by the special rules made in pursuance of this Act, to be used, a competent person who shall be appointed for the purpose shall examine every safety lamp immediately before it is taken into the workings for use, and ascertain it to be secure and securely locked, and in any part of a mine in which safety lamps are so required to be used, they shall not be used until they have been so examined and found secure and securely locked, and shall not without due authority be unlocked, and in the said part of a mine a person shall not, unless he is appointed for the purpose, have in his possession any key or contrivance for opening the lock of any such safety lamp, or any lucifer match or apparatus of any kind for striking a light.

(8) Gunpowder or other explosive or inflammable substance shall only be used in the mine underground as follows : Gunpowder and blasting.

- (a) It shall not be stored in the mine :
- (b) It shall not be taken into the mine, except in a case or canister containing not more than four pounds :
- (c) A workman shall not have in use at one time in any one place more than one of such cases or canisters :
- (d) In charging holes for blasting, an iron or steel pricker shall not be used, and a person shall not have in his possession in the mine underground any iron or steel pricker, and an iron or steel tamping rod or stemmer shall not be used for ramming either the wadding or the first part of the tamping or stemming on the powder :
- (e) A charge of powder which has missed fire shall not be unrammed :
- (f) It shall not be taken into or be in the possession of any person in any mine, except in cartridges, and shall not be used, except in accordance with the following regulations, during three months after any inflammable gas has been found in any such mine; namely,

- (1) A competent person who shall be appointed for the purpose shall, immediately before firing the shot, examine the place where it is to be used, and the places contiguous thereto, and shall

not allow the shot to be fired unless he finds it safe to do so, and a shot shall not be fired except by or under the direction of a competent person who shall be appointed for the purpose :

- (2) If the said inflammable gas issued so freely that it showed a blue cap on the flame of the safety lamp, it shall only be used—
 - (a) Either in those cases of stone drifts, stone work, and sinking of shafts, in which the ventilation is so managed that the return air from the place where the powder is used passes into the main return air course without passing any place in actual course of working ; or
 - (b) When the persons ordinarily employed in the mine are out of the mine or out of the part of the mine where it is used :
 - (g) Where a mine is divided into separate panels in such manner that each panel has an independent intake and return air-way from the main air course and the main return air course, the provisions of this rule with respect to gunpowder or other explosive inflammable substance shall apply to each such panel in like manner as if it were a separate mine.
- (9) Where a place is likely to contain a dangerous accumulation of water the working ap-

proaching such place shall not exceed eight feet in width, and there shall be constantly kept at a sufficient distance, not being less than five yards, in advance, at least one bore-hole near the centre of the working, and sufficient flank bore-holes on each side.

(10) Every underground plane on which persons ^{Man-holes.} travel, which is self-acting or worked by an engine, windlass, or gin, shall be provided (if exceeding thirty yards in length) with some proper means of signalling between the stopping places and the ends of the plane, and shall be provided in every case, at intervals of not more than twenty yards, with sufficient man-holes for places of refuge.

(11) Every road on which persons travel underground where the load is drawn by a horse or other animal shall be provided, at intervals of not more than fifty yards, with sufficient man-holes, or with a space for a place of refuge, which space shall be of sufficient length, and of at least three feet in width, between the waggons running on the tram-road and the side of such road.

(12) Every man-hole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or such space so as to prevent access thereto.

(13) The top of every shaft which for the time ^{Fencing of} being is out of use, or used only as an air ^{old shafts.} shaft, shall be securely fenced.

Fencing of entrances to shafts.

(14) The top and all entrances between the top and bottom of every working or pumping shaft shall be properly fenced, but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations, if proper precautions are used.

Securing of shafts.

(15) Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined, or otherwise made secure.

Securing of roofs and sides.

(16) The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing, travel or work in any such travelling road or working place which is not so made secure.

Use of different shafts.

(17) Where there is a downcast and furnace shaft, and both such shafts are provided with apparatus in use for raising and lowering persons, every person employed in the mine shall, upon giving reasonable notice, have the option of using the downcast shaft.

Attendance of engine-man.

(18) In any mine which is usually entered by means of machinery, a competent person of such age as prescribed by this Act shall be appointed for the purpose of working the machinery which is employed in lowering and raising persons therein, and shall attend for the said purpose during the whole time that any person is below ground in the mine.

Signalling.

(19) Every working shaft used for the purpose of

drawing minerals or for the lowering or raising of persons shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector of the district, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in work between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft and to every entrance for the time being in work between the surface and the bottom of the shaft.

(20) A sufficient cover overhead shall be used Cover overhead. when lowering or raising persons in every working shaft, except where it is worked by a windlass, or where the person is employed about the pump or some work of repair in the shaft, or where a written exemption is given by the inspector of the district.

(21) A single linked chain shall not be used for Chains, lowering or raising persons in any working shaft or plane except for the short coupling chain attached to the cage or load.

(22) There shall be on the drum of every machine Slipping of rope on drum. used for lowering or raising persons such flanges or horns, and also if the drum is conical, such other appliances, as may be sufficient to prevent the rope from slipping.

(23) There shall be attached to every machine Break. worked by steam, water, or mechanical

power and used for lowering or raising persons, an adequate break, and also a proper indicator (in addition to any mark on the rope) which shows to the person who works the machine the position of the cage or load in the shaft.

Fencing
machinery.

(24) Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and be kept securely fenced.

Gauges to
boilers and
safety valve.

(25) Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.

Barometer,
&c.

(26) After dangerous gas has been found in any mine, a barometer and thermometer shall be placed above ground in a conspicuous position near the entrance to the mine.

Wilful
damage.

(27) No person shall wilfully damage, or without proper authority remove or render useless any fence, fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, break, indicator, steam gauge, water gauge, safety valve, or other appliance or thing provided in any mine in compliance with this Act.

Observance
of directions.

(28) Every person shall observe such directions with respect to working as may be given to him with a view to comply with this Act or the special rules.

Daily in-
spection of
mine.

(29) A competent person or competent persons

who shall be appointed for the purpose shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery, and the state of the head gear, working places, levels, planes, ropes, chains, and other works of the mine which are in actual use, and once at least in every week shall examine the state of the shafts by which persons ascend or descend, and the guides or conductors therein, and shall make a true report of the result of such examination, and such report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the person who made the same.

(30) The persons employed in a mine may from time to time appoint two of their number to inspect the mine at their own cost, and the persons so appointed shall be allowed, once at least in every month, accompanied, if the owner, agent, or manager of the mine thinks fit, by himself or one or more officers of the mine, to go to every part of the mine, and to inspect the shafts, levels, planes, working places, return air-ways, ventilating apparatus, old workings, and machinery, and shall be afforded by the owner, agent, and manager, and all persons in the mine, every facility for the purpose of such inspection, and shall make a true report of the result of such inspection, and such report shall be recorded in a book to

[A A]

Inspection
of mine on
behalf of
workmen.

be kept at the mine for the purpose, and shall be signed by the persons who made the same.

Books.

(31) The books mentioned in this section, or a copy thereof, shall be kept at the office at the mine, and any inspector under this Act, and any person employed in the mine, may, at all reasonable times, inspect and take copies of and extracts from any such books.

Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this Act; and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which this Act applies, by any person whomsoever, being proved, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine, to prevent such contravention or non-compliance.

Special rules.

Special Rules.—52. There shall be established in every mine to which this Act applies such rules (referred to in this Act as special rules) for the conduct and guidance of the persons acting in the management of such mine or employed in or about the same as, under the particular state and circumstances of such mine, may appear best calculated to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the mine, and such special rules, when

established, shall be signed by the inspector who is inspector of the district at the time such rules are established, and shall be observed in and about every such mine, in the same manner as if they were enacted in this Act.

If any person who is bound to observe the special rules established for any mine acts in contravention of or fails to comply with any of such special rules, he shall be guilty of an offence against this Act, and also the owner, agent, and manager of such mine, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine, so as to prevent such contravention or non-compliance, shall each be guilty of an offence against this Act.

53. The owner, agent, or manager of every mine to which this Act applies shall frame and transmit to the inspector of the district, for approval by a Secretary of State, special rules for such mine, within three months after the commencement of this Act, or within three months after the commencement (if subsequent to the commencement of this Act) of any working for the purpose of opening a new mine, or of renewing the working of an old mine.

Establish-
ment of new
special rules.

The proposed special rules, together with a printed notice specifying that any objection to such rules on the ground of anything contained therein or omitted therefrom, may be sent by any of the persons employed in the mine to the inspector of the district, at his address, stated in such notice, shall, during not less than two weeks before such rules are transmitted

to the inspector, be posted up in like manner as is provided in this Act respecting the publication of special rules for the information of persons employed in the mine, and a certificate that such rules and notice have been so posted up shall be sent to the inspector with the rules, signed by the person sending the same.

If the rules are not objected to by the Secretary of State within forty days after their receipt by the inspector, they shall be established.

Secretary of
State may
object to
special rules.

54. If the Secretary of State is of opinion that the proposed special rules so transmitted, or any of them, do not sufficiently provide for the prevention of dangerous accidents in the mine, or for the safety of the persons employed in or about the mine, or are unreasonable, he may, within forty days after the rules are received by the inspector, object to the rules, and propose to the owner, agent, or manager in writing any modifications in the rules by way of either omission, alteration, substitution, or addition.

If the owner, agent, or manager does not within twenty days after the modifications proposed by the Secretary of State are received by him, object in writing to them, the proposed special rules, with such modifications, shall be established.

If the owner, agent, or manager sends his objection in writing within the said twenty days to the Secretary of State, the matter shall be referred to arbitration, and the date of the receipt of such objection by the Secretary of State shall be deemed to be the date of the reference, and the rules shall be established as settled by an award on arbitration.

55. After special rules are established under this ^{Amendment} _{or special} ^{rules.} Act in any mine, the owner, agent, or manager of such mine may from time to time propose in writing to the inspector of the district, for the approval of a Secretary of State, any amendment of such rules or any new special rules, and the provisions of this Act with respect to the original special rules shall apply to all such amendments and new rules in like manner, as near as may be, as they apply to the original rules.

A Secretary of State may from time to time propose in writing to the owner, agent, or manager of the mine any new special rules, or any amendment to the special rules, and the provisions of this Act with respect to a proposal of a Secretary of State for modifying the special rules transmitted by the owner, agent, or manager of a mine shall apply to all such new special rules and amendments in like manner, as near as may be, as they apply to such proposal.

56. If the owner, agent, or manager of any mine to which this Act applies makes any false statement with respect to the posting up of the rules and notices, he shall be guilty of an offence against this Act, and if special rules for any mine are not transmitted within the time limited by this Act to the inspector for the approval of a Secretary of State, the owner, agent, and manager of such mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means, by enforcing to the best of his power the provisions of this section, to secure the transmission of such rules.

57. For the purpose of making known the special ^{Publication} _{of special} ^{rules.} rules and the provisions of this Act to all persons em- rules.

ployed in and about each mine to which this Act applies, an abstract of the Act supplied, on the application of the owner, agent, or manager of the mine, by the inspector of the district on behalf of a Secretary of State, and an entire copy of the special rules shall be published as follows :

- (1) The owner, agent, or manager of such mine shall cause such abstract and rules, with the name and address of the inspector of the district, and the name of the owner or agent and of the manager appended thereto, to be posted up in legible characters, in some conspicuous place at or near the mine, where they may be conveniently read by the persons employed ; and so often as the same become defaced, obliterated, or destroyed, shall cause them to be renewed with all reasonable despatch :
- (2) The owner, agent, or manager shall supply a printed copy of the abstract and the special rules gratis to each person employed in or about the mine who applies for such copy at the office at which the persons immediately employed by such owner, agent, or manager are paid :
- (3) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and employed.

In the event of any non-compliance with the provision of this section by any person whomsoever, the owner, agent, and manager shall each be guilty of an

offence against this Act; but the owner, agent, or manager of such mine shall not be deemed guilty if he prove that he had taken all reasonable means, by enforcing to the best of his power the observance of this section, to prevent such non-compliance.

58. Every person who pulls down, injures, or defaces any proposed special rules, notice, abstract, or special rules when posted up in pursuance of the provisions of this Act with respect to special rules, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Act.

59. An inspector under this Act shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules, which for the time being are established under this Act in any mine, and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules and of the fact that they are duly established under this Act and have been signed by the inspector.

Defacing notices.

Certified copy of special rules to be evidence.

PART III.

Supplemental.

Penalties.—60. Every person employed in or about a mine, other than an owner, agent, or manager, who is guilty of any act or omission which in the case of an owner, agent, or manager would be an offence against this Act, shall be deemed to be guilty of an offence against this Act.

Penalty for offences against Act.

Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding, if he is an owner, agent, or manager, twenty pounds, and if he is any other person, two pounds, for each offence; and if the inspector has given written notice of any such offence, to a further penalty not exceeding one pound for every day after such notice that such offence continues to be committed.

Imprison-
ment for
wilful
neglect
endangering
life or limb.

61. Where a person who is an owner, agent, or manager of, or a person employed in or about a mine is guilty of any offence against this Act which, in the opinion of the court that tries the case, is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any of such persons, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding three months.

If any person feel aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, by which conviction imprisonment is adjudged in pursuance of this section, or by which conviction the sum adjudged to be paid amounts to or exceeds half the maximum penalty, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1) The appeal shall be made to the next court of

general or quarter sessions for the county, division, or place in which the cause of appeal has arisen, holden not less than twenty-one days after the decision of the court from which the appeal is made :

- (2) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:
- (3) The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow :
- (4) The justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody :
- (5) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such

order as to costs to be paid by either party as the court thinks just.

Provided that in Scotland—

- (1) This section shall not apply to any conviction made by a sheriff:
- (2) The term “entering into a recognizance before a justice of the peace” shall mean finding caution with the clerk of the justices of the peace to the satisfaction of a justice of the peace, and the term “recognizance” shall mean a bond of caution:
- (3) In Scotland it shall be competent to any person so empowered to appeal by this section, to appeal against a conviction by a sheriff to the next circuit court, or where there are no circuit courts to the high court of justiciary at Edinburgh, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

Summary
proceedings
for offences,
penalties, &c.

62. All offences under this Act not declared to be misdemeanours, and all penalties under this Act, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction.

Proceedings for the removal of a check weigher

shall be deemed to be a matter on which a court of summary jurisdiction has authority by law to make an order in pursuance of the Summary Jurisdiction Acts, and summary orders under this Act may be made on complaint before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted—

- (a) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace and sitting alone or with others at some court or other place appointed for the administration of justice; or,
- (b) In Scotland, of two or more justices of the peace sitting as judges in a justice of the peace court, or of the sheriff or some other magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace, and sitting alone or with others at some court or other place appointed for the administration of justice; or,
- (c) In Ireland, within the police district of Dublin metropolis, of one of the divisional justices of that district sitting at a police

court within the district, and elsewhere of two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions.

General provisions as to summary proceedings.

63. In every part of the United Kingdom the following provisions shall have effect:

- (1) Any complaint or information made or laid in pursuance of this Act shall be made or laid within three months from the time when the matter of such complaint or information respectively arose:
- (2) The description of any offence under this Act in the words of this Act shall be sufficient in law:
- (3) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant:
- (4) The owner, agent, or manager may, if he think fit, be sworn and examined as an ordinary witness in the case where he is charged in respect of any contravention or non-compliance by another person:
- (5) The court shall, if required by either party, cause minutes of the evidence to be taken and preserved:
- (6) A court of summary jurisdiction shall not impose a penalty under this Act exceeding

fifty pounds, but any such court may impose that or any less penalty for any one offence, notwithstanding the offence involves a penalty of higher amount.

64. No prosecution shall be instituted against the owner, agent, or manager of a mine to which this Act applies for any offence under this Act which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State; and in the case of any offence of which the owner, agent, or manager of a mine is not guilty if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner, agent, or manager, if satisfied that he had taken such reasonable means as aforesaid.

65. In Scotland the following provisions shall have effect:

(1) All jurisdictions, powers, and authorities necessary for the court of summary jurisdiction under this Act are hereby conferred on that court:

(2) Every person found liable under this Act by a court of summary jurisdiction in any penalty, or to pay any money or costs by this Act directed to be recovered as penalties, shall be liable in default of immediate payment to be imprisoned for a term not exceeding three months, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864:

(3) In Scotland any penalty exceeding fifty pounds shall be recovered and enforced in the same manner in which any penalty due to Her Majesty under any Act of Parliament may be recovered and enforced.

Persons not to be punished twice for the same offence.

66. Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act, so that no person be punished twice for the same offence.

If the court before whom a person is charged with an offence under this Act think that proceedings ought to be taken against such person for such offence under any other Act or otherwise, the court may adjourn the case to enable such proceedings to be taken.

Owner of mine, &c., not to act as justice, &c., in proceedings under this Act.

67. A person who is the owner, agent, or manager of any mine to which this Act applies, or the father, son, or brother of such owner, agent, or manager, shall not act as a court or member of a court of summary jurisdiction in respect of any offence under this Act.

Application of penalties.

68. Where a penalty is imposed under this Act for neglecting to send a notice of any explosion or accident or for any offence against this Act which has occasioned loss of life or personal injury, a Secretary of State may (if he think fit) direct such penalty to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by such explosion, accident, or offence, or among some of them.

Provided that—

(1) Such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence:

(2) The fact of such payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on such explosion, accident, or offence.

Save as aforesaid, all penalties imposed in pursuance of this Act shall be paid into the receipt of Her Majesty's Exchequer, and shall be carried to the Consolidated Fund.

In Ireland all penalties imposed and recovered under this Act shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Act amending the same.

69. The owner, occupier, or manager of every mine shall on the first of January every year, and at any other time when required by the Secretary of State, send to the inspector of his district a return of facts relating to his mine in the form given in Schedule Four.

Miscellaneous.—70. If any question arises whether a mine is a mine to which this Act or the Metalliferous Mines Regulation Act, 1872, applies, such question shall be referred to a Secretary of State, whose decision thereon shall be final.

71. All notices under this Act shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served or sent by or to an inspector may be either delivered personally, or served and sent by

Return as in
Sched. Four
to be sent to
inspector of
district.

As to ques-
tion whether
a mine is a
mine under
this Act.

Notices may
be served by
post.

post by a prepaid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

Interpreta-
tion of
terms.

72. In this Act, unless the context otherwise requires,—

The term "mine" includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, and sidings, both below ground and above ground, in and adjacent to a mine and any such shaft, level, and inclined plane, and belonging to the mine:

The term "shaft" includes pit:

The term "plan" includes a map and section, and a correct copy or tracing of any original plan as so defined:

The term "owner," when used in relation to any mine, means any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but

any contractor for the working of any mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability:

The term "agent," when used in relation to any mine, means any person having, on behalf of the owner, care or direction of any mine, or of any part thereof, and superior to a manager appointed in pursuance of this Act:

The term "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

The term "child" means a child under the age of thirteen years:

The term "young person" means a person of the age of thirteen years and under the age of sixteen years:

The term "woman" means a female of the age of sixteen years and upwards:

The term "Summary Jurisdiction Acts" means as follows:

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same:

As to Scotland, "The Summary Procedure Act, 1864:"

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers

and duties of justices of the peace for such district, or of the police of such district, and elsewhere, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same:

The term "Court of Summary Jurisdiction" means—

In England and Ireland, any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to :

In Scotland, any justice or justices of the peace, sheriff, or other magistrate, to the proceedings before whom for the trial or prosecution of any offence, or for the recovery of any penalty under any Act of Parliament, the provisions of the Summary Jurisdiction Acts may be applied.

Application
of Act to
Scotland.

73. In the application of this Act to Scotland—
 - (1) The term "Attorney General" means the Lord Advocate :
 - (2) The term "injunction" means interdict :
 - (3) The term "misdemeanour" means "crime and offence:"
 - (4) The term "chairman of quarter sessions" means the sheriff of the county :
 - (5) The term "sheriff" includes sheriff substitute :
 - (6) The term "attending on subpoena before a court of record" means attending on citation the Court of Justiciary :
 - (7) The Queen's and Lord Treasurer's Remembrancer shall perform the duties of a master of one of the superior courts under this Act :

(8) The term "stipendiary magistrate" means a sheriff or sheriff substitute:

(9) Notices of explosions, accidents, loss of life, or personal injury shall be deemed to be sent to the inspector of the district on behalf of the Lord Advocate:

(10) Section sixteen of "The Public Health (Scotland) Act, 1867," shall be substituted for "section eight of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866."

74. The persons who at the commencement of this Act are acting as inspectors under the Acts hereby repealed shall continue to act in the same manner as if they had been appointed under this Act. Existing inspectors to continue to act.

75. The special rules which at the commencement of this Act are in force under any Act hereby repealed in any mine to which this Act applies shall continue to be the special rules in such mine until special rules are established under this Act for such mine, and while they so continue shall be of the same force as if they were established under this Act. Continuance of existing special rules.

76. The Acts described in Schedule Three to this Act are hereby repealed to the extent in the third column of that Schedule mentioned. Repeal of Acts as in Schedule Three.

Provided that this repeal shall not affect anything done or suffered before the commencement of this Act, and all offences committed and penalties incurred before the commencement of this Act may be punished and recovered in the same manner as if this Act had not passed.

SCHEDULES.

SCHEDULE ONE.

Table of maximum Fees to be paid in respect of Certificates of Managers of Mines.

By an applicant for examination	- - -	Two pounds.
By applicant for certificate of service for registration	- - - - -	Five shillings.
For copy of certificate	- - - - -	Five shillings.

SCHEDULE TWO.

Proceedings of Board for Examinations.

1. The board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions:—

- (a) The first meeting shall be summoned by the inspector of the district, and shall be held on such day as may be fixed by a Secretary of State;
- (b) An extraordinary meeting may be held at any time on the written requisition of three members of the board addressed to the chairman;
- (c) The quorum to be fixed by the board shall consist of not less than three members;
- (d) Every question shall be decided by a majority of votes of the members present and voting on that question;
- (e) The names of the members present, as well as those voting upon each question, shall be recorded;
- (f) No business shall be transacted unless notice in writing of such business has been sent to every member of the board seven days at least before the meeting.

2. The board shall from time to time appoint some person to be chairman, and one other person to be vice-chairman.

3. If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting, and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be chairman of such meeting.

4. In case of an equality of votes at any meeting, the chairman for the time being of such meeting shall have a second or casting vote.

5. The appointment of an examiner may be made by a minute of the board signed by the chairman.

6. The board shall keep minutes of their proceedings, which may be inspected or copied by a Secretary of State, or any person authorised by him to inspect or copy the same.

SCHEDULE THREE.

Date of Act.	Title of Act.	Extent of Repeal.
5 & 6 Vict. c. 99.	An Act to prohibit the employment of women and girls in mines and collieries, to regulate the employment of boys, and to make other provisions relating to persons working therein.	The whole Act so far as it relates to mines to which this Act applies.
23 & 24 Vict. c. 151.	An Act for the regulation and inspection of mines.	Sections one to five, both inclusive, so far as they relate to mines to which this Act applies, and the residue of the Act entirely.
25 & 26 Vict. c. 79.	An Act to amend the law relating to coal mines.	The whole Act.

SCHEDULE IV.

MINES REGULATION AND INSPECTION.

Annual Return from Owner or Agent.

Name of Colliery _____ Name of Seam _____
Name of Pit _____ Year ending the _____ day of _____ 187 .

APPENDIX.

No. I.

THE following lease of a colliery has been drawn as simply and briefly as the nature of the transaction will permit. The repetition of the words "heirs and assigns, executors," &c., is dispensed with by a clause at the end, which is adopted from a form used by the Ecclesiastical Commissioners.

This Indenture made the day of One thousand eight hundred and sixty-one, between John Wilson of , Esq., hereinafter called the lessor, of the one part, and James Jones of , gentleman, hereinafter called the lessee, of the other part. Witnesseth that the said lessor doth hereby demise unto the said lessee all that colliery, Demise to lessee. coal mine, and seams of coal, whether previously worked or not, known by the name of the Colliery, in the county of G———, within and under the lands of the said lessor, situate in the parish of , and containing acres, or thereabouts, a plan of which is annexed to this indenture, and which said colliery was lately in the occupation of Messrs. , together with the colliers' houses and other houses and buildings belonging to and used with the said colliery; and all engines, gins, engine-houses, lodges, staiths, spouts, boilers, cylin-

Description of property.

Powers to lessee.

Ground-room, and heap-room, &c.

Exception of the workman to be therein employed. Except and right of way.

ders, pumps, waggon, waggon-ways, rails, sleepers, and all other appurtenances whatsoever to the said colliery in any wise belonging, and now or heretofore commonly known as part thereof, with liberty to use the present, and sink new pits, drifts, trenches, grooves, water-gates, water-courses, and other works, and lay and repair any new or other waggon-ways, bye-ways, and side-ways, in, over, and along any of the said lands, and to use and repair the present, and make new staiths on such lands for the winning and working, depositing, vending, leading, and carrying on the said colliery and the coals thereof, and also to use those portions of the said lands which are coloured yellow on the said plan, containing acres or thereabouts, for ground-room, heap-room, and pit-room for laying and placing the coal, stone, earth, rubbish and other substances which shall during the term be gotten out of the colliery, mines, and seams of coal hereby demised, and also any additional land comprised within the said plan, which may during the term be required by the said lessee for the purposes aforesaid, such additional land to be marked out and appropriated, both as to situation and quantity, by the said lessee, and the said lessor or their mineral agents respectively, after fourteen days' notice by the said lessee to the said lessor of such requirement, and to use the present, and make new steam and other engines for the purpose aforesaid; also to use the present and build such other houses, hovels, and lodges upon such parts of the land under which the said coal mines or seams are situate as the said lessee shall think most convenient for reserved unto the said lessor and his servants, and the tenants for the time being, of the lands over which way-leave is hereby granted, and to the tenants and occupiers of the lands under which the

said coal mine or seams of coal are situate, and over which way-leave is hereby granted, liberty and passage over and along all the ways hereby granted with waggons, horses, and other animals, and for workmen for all purposes of husbandry, doing as little damage as may be, and without making compensation. To Hold the said colliery, coal mine, and Habendum. seams of coal, and all the other premises and appurtenances hereinbefore demised and described unto the said James Jones, for the term of years from the day of now last past. Yielding and paying therefore unto the said John Wilson Rents and every year during the said term, the certain rent reserved. of £ for eighteen hundred tons of coal (other than small and refuse coal), whether such number of tons of coal shall be yearly worked or not; the said yearly rent to be payable and paid on the day of , and the day of in every year by equal portions, and the first payment to be made on the day of now next ensuing; and also yielding and paying for the use of the said parcel of land, coloured yellow, the yearly surface rent of pounds, and for the use of every additional piece of the lands which might be required by the said lessee for the same purposes the yearly surface rent of pounds for every acre appropriated for the purposes aforesaid. And also yielding and paying unto the said lessor over and above the said certain rent of £ the further render or royalty of d. for every ton of coals got out of the said colliery (other than small or refuse coal), in excess of the eighteen hundred tons for which the said certain rent is reserved, the said renders or royalties to be payable and paid on the same days during the said term as the said certain rent is hereinbefore made payable; the said several rents or renders to be

paid free of all existing and future rates and taxes, except property tax if any.

Coal free of
cost for use
of engine.

Deficiency
clause.

Power to dis-
train and
re-enter.

Provided always and it is hereby covenanted, agreed, and declared by and between the said lessor and lessee, that no royalties or rent shall be paid by the said lessee for any coal used for the stationary engine or ventilating furnaces, or for any purpose of carrying into effect the objects of this demise, which shall be gotten out of the mines and premises hereby demised, but if the said lessee shall work any other property in connection with the mines and premises hereby demised, the coal used for the aforesaid purposes shall be fairly apportioned between each property according to the quantity of coal raised from each work. Provided always and it is hereby further covenanted, agreed, and declared by and between the said lessor and lessee, that if the said lessee shall in any year have paid the said certain rent of £ for the said eighteen hundred tons of coal, and shall have failed to raise that quantity in the same year, and shall in any succeeding year (during a period of years to be reckoned from the commencement of the year in which such deficiency has occurred) raise more than the said eighteen hundred tons, then, and as often as the same shall happen, it shall be lawful for the lessee in any succeeding year or years within the said period, and before the expiration or determination of the term, to keep back for his own use the royalty on such a quantity of the surplus workings as shall be equal to such deficiency in any such preceding year, but nevertheless the said lessor shall every year receive his said full certain rent of £ in the manner aforesaid. Provided also that if it shall happen that the said certain rent, or other renders or royalties hereby reserved, or any part thereof, shall be unpaid for forty days after the days on which the same ought

to be paid, and the same shall have been demanded at or after the expiration of the forty days and not paid at the time of the demand, then it shall be lawful for the said lessor not only to stop the leading of coals from the said colliery, but also to enter in and upon all the said colliery, and to distrain all the coals there deposited, and all the live and dead stock, plant, machinery, materials, and things whatsoever, used in or about the said colliery hereby demised, and to lead and take away the distresses then and there found, and sell and dispose of the same according to law, until the said rents or royalties, and every part thereof, and also the lawful and reasonable costs of such distress and sale shall have been satisfied, rendering the overplus, if any, to the said lessee ; and also to re-enter into and upon the colliery and premises hereby demised, or any part thereof, in the name of the whole, and to have and enjoy the same again in his former estate, notwithstanding this demise. And the said lessee covenants with the said lessor that the said lessee will pay to the said lessor the certain rent and royalties aforesaid at the times aforesaid ; and *also* will defray all rates, taxes, and outgoings chargeable by law upon the said colliery and premises ; and *also* will keep accurate plans of the workings underground in the office, or other convenient place attached to the said colliery, and permit the same to be inspected from time to time by the said lessor or his agents ; and *also* will at his own cost maintain the works and machinery in good order and repair ; and *also* will weigh or cause to be weighed by a weighing machine truly adjusted all coals gotten and raised from the said colliery during the said term ; and *also* that the lessee will work and carry on the said colliery in a fair and proper manner, according to the best course and method of working collieries in the _____ of _____ ; and *also* shall

Covenants
by the
lessee ; No. 1,
to pay the
rents.

No. 2, to
discharge
rates and
taxes.

No. 3, to
keep plans
of the
workings.

No. 4, to
repair.

No. 5, to
weigh all the
coals.

No. 6, to
work in a
proper
manner.

No. 7, no
commit

negligent act wh. r. by in-
jury may ensue. not commit or willingly suffer to be committed any negligent act whereby the said colliery or any part thereof shall or may be drowned or overburthened with water or foul air from any wastes in the said colliery, or from any neighbouring colliery, or which may occasion or bring any thrust or creep upon the said colliery, or obstruct the watercourses, passages, or drifts belonging to the same; and *also* shall leave a barrier of coal twenty yards in breadth against any other colliery adjoining the same; and *also* shall keep accurate accounts under the hands of the viewer or overman of all such quantities of coal as shall be won and worked out of the said colliery, and deliver the same to the lessor or his agent on request on the first Monday in every calendar month; and *also* that it shall be lawful for the said lessee and his agents from time to time, and at all times during the term, to have free access to inspect the overman's and staithman's books of presentment and leadings relating to the working and leading of coals gotten out of the said colliery; and also to inspect the condition and working of the premises; and *also* that the lessee will erect fences and gates, and provide gate-keepers, and make compensation for any damage that may occur from their neglect or the want of such fences; and *also* will compensate the tenants and occupiers of the surface lands under which the seams of coal hereby demised do lie for all actual or consequential damage occasioned by the exercise of the powers by this deed granted, and *also* will at the expiration or sooner determination of the said term yield up unto the lessor the quiet and peaceable possession of the said colliery, way-leaves, and all the other premises hereby demised (including such of the watercourses as shall be necessary for working the remaining part, if any, of the said colliery) in as good condition as the then state of the colliery will admit of; and *further* that it

No. 8, to leave a barrier.

No. 9, to keep accounts of coal.

No. 10, to give access to inspect books.

No. 11, to erect fences and gates.

No. 12, to make compensation for damage to the surface.

No. 13, to give peaceable possession at the proper time.

^{4.}, that or or

shall be lawful for the lessor, or his next succeeding lessee or lessees, at any time within six calendar months next before the expiration or sooner determination of the term, to enter upon the said colliery and premises, and to sink pits, drive drifts, and make trenches, grooves, and all other works necessary for carrying on the said colliery after the expiration or other determination of the said term ; (and *also* that the said lessee shall before the expiration of years from the commencement of this term sink the pit to be called the pit to the seam of coal, and also during the continuance of the term shall at all times after sinking the said pit, win, work, and raise the coal to be gotten out of the said seam of coal at the said pit, so long as the same shall be fairly workable*), and *also* (if required) will within six calendar months from the expiration or determination of the term fill up such shafts and level for agricultural purposes the surface lands used under the powers hereby granted ; and *also* that the said lessee shall not at any time during the said term alien, assign, let, or part with the possession of this indenture of lease, or all or any part of the colliery and premises aforesaid (except by will) to any person or persons whomsoever, for all or any part of the said term, without the consent in writing of the said lessor first had and obtained. *Provided*, nevertheless, that the covenant hereinbefore lastly contained is intended for the sole purpose that the said colliery and premises hereby demised may not be assigned or under-let to any indigent person or persons, and not to restrain the said lessee from assigning or parting with the same or any estate or interest therein to any respectable and responsible person or persons, and that the said lessor will not arbitrarily and without suffi-

new lessee
may sink
pits, &c. six
months be-
fore the end
of the lease.

No. 15, that
the lessee
will sink a
certain pit.

No. 16, that
the lessee
will level the
surface
within six
months after
the end of
the lease.

No. 17, that
the lessee
will not as-
sign without
leave.

Proviso as to
the meaning
of the pre-
vious cove-
nant.

* This clause of course may or may not be required.

cient cause to be stated in writing to the said lessee within one month after the same shall be applied for, withhold such consent, nor demand any sum of money, premium, or reward for granting the same ; and in case of dispute as to what shall be deemed such sufficient cause, the same shall be referred to arbitration,

Covenants
by the lessor ;
No. 1, for
quiet enjoy-
ment.

in the manner hereinafter provided :—1. The said lessor covenants with the lessee that the lessee's covenants and liabilities by this indenture entered into and incurred, being duly fulfilled and discharged on his side, the said lessee shall occupy the colliery and premises aforesaid without interruption from the lessor.

No. 2, that
the lessee be
not com-
pelled to
work
through
creeps, &c.

2. And further that in the regular working of the said colliery the lessee shall not be compelled to clear away, penetrate, or work through any creep, thrust, or old waste, which may now be in the said colliery, or any seam of coal hereby demised, for the purpose of winning and working any tract or quantity of coal now left in any such seam.

Lessee may
remove coal
after the end
of the term.

3. And further that it shall be lawful for the lessee, so long as his said covenants and liabilities shall be duly fulfilled and discharged, at any time within calendar months from the expiration or determination of the term, to remove from the premises all such coals as shall be wrought and laid above ground at the shaft belonging to the said colliery. And it is hereby agreed and declared between the parties to this indenture that a fair valuation shall be forthwith made

Agreement
for a valua-
tion of ma-
chinery, &c.

by some person or persons to be named and agreed upon by both parties of the engines, boilers, cylinders, sprouts, staiths, railways, tramways, and all other articles of the fixed stock and plant belonging to the said colliery, and that copies of such valuation shall be signed by the person or persons making the same, and also by the parties hereto, who shall then each keep one such copy, and that at the expiration or determination of the term a similar valuation shall

be made of the fixed stock and plant which shall then belong to and be used in the said colliery, and if the amount of the said first valuation shall exceed that of the last valuation, then the lessee shall pay to the lessor such sum of money as shall be necessary to make up the difference, but if the amount of the said last valuation shall exceed the amount of the said first valuation, then the lessor shall pay to or permit the lessee to retain out of the rents hereby reserved, and then remaining unpaid, such sum as shall be necessary to make up the difference. And it is hereby further declared and agreed between the parties to these presents, that the live and moveable stock belonging to the lessor, and now used in and about the said colliery, shall be forthwith fairly valued by some person or persons, to be named and agreed upon by both parties, and that the lessee shall pay to the lessor immediately after such valuation shall have been made the full amount thereof in bills to be drawn by the said lessor upon and accepted by the said lessee, and to be payable respectively at (two, four, and six) months from the day of last, each of such bills to be drawn for one (third) part of the said amount. And it is hereby further agreed and declared between the parties to this indenture that the live stock belonging to the said colliery at the expiration or determination of the term, and also all the coals then wrought and gotten thereout, and which shall be then unsold and lying above ground, not exceeding the quantity of tons, shall at the expiration or determination of the term be fairly valued as the stock of a working colliery, and that the lessor shall within twelve calendar months after such valuation shall have been made pay to the lessee the full amount thereof, and that thenceforth the said live stock and coals shall be the property of the said lessor for ever. And it is hereby further agreed and declared between

Agreement
for the im-
mediate va-
luation of,
and payment
for, live
stock, &c.

Agreement
for the valua-
tion of the
live stock,
&c., at end of
term.

Arbitration
clause.

the said parties that any disputes under these presents shall be referred to two arbitrators, whose written determination thereon (or that of an umpire chosen by themselves in case of difference) shall conclude the disputing parties, and within thirty days from written notice of arbitration each disputing party shall name an arbitrator, and if either shall fail to do so both arbitrators shall be named by the other party, and that the arbitrators or their umpire may call in professional assistance, and may require the personal attendance and examination of the said parties, and those claiming under them, and the production of all documents relative to the dispute, and may determine by whom the expenses of arbitration shall be defrayed, together with the amount thereof. Provided always, and it is hereby further covenanted and agreed between the parties to this lease, that if all the marketable coal that can be fairly worked according to the most approved method of working in the neighbourhood shall be worked out and exhausted before the expiration of this term, and the said lessee shall give notice to the said lessor six calendar months before the end of the year of the term in which such marketable coal shall be worked out, that the same has been or will be worked out, then at the end of that year on payment or tender of all the rents and royalties that may become payable up to the end of such year, the said term shall cease and determine, subject always to such claims as the said lessor may have in consequence of the breach of any of the covenants, provisoies, conditions, or agreements herein contained on the part of the lessee. Provided, lastly, that the heirs and assigns of the said John Wilson, and the executors, administrators, and assigns of the said James Jones, hereinbefore called the lessor and the lessee, shall be bound by and entitled to the benefit of these

Proviso for putting an end to the term when the coal is exhausted.

Proviso for dispensing with the words "executors, administrators," &c., in the body of the lease.

presents, and the covenants, conditions, provisoies and agreements herein contained, in like manner as if they had been respectively named therein next after the words "lessor" and "lessee," respectively throughout as far as the same will admit, and unless the context or the nature of the case may require a different construction.

In Witness, &c.

No. II.

LEASE OF A COLLIERY IN THE NORTH OF ENGLAND
WITH SCHEDULES.

THIS Indenture made the day of .
Between of the one part and of
the other part.

Witnesseth that in consideration of the rents reserved by this lease, and of the covenants and conditions contained in this lease, and on the part of the lessees to be observed and performed, the said doth hereby so far as he lawfully can or may appoint and demise unto the said , their executors, administrators, and assigns

The mines, beds, veins, and seams of coal, iron-stone, fire-clay, and common clay mentioned and described in the first part of the schedule hereunder written. Together with the liberties, powers, and privileges to be exercised and enjoyed in connection with the said mines and premises which are mentioned and specified in the second part of the schedule. (Except and reserved out of this demise unto the said , and other the person or persons, for the time being entitled to the mines and premises, hereby demised, in reversion expectant on this lease, the liberties, powers, and privileges mentioned and

specified in the third part of the said schedule.) To hold the said mines and premises hereby demised unto the said , their executors, administrators, and assigns from the day of for the term of years thence next ensuing. Yielding and paying to the said , or other the person or persons, for the time being entitled as aforesaid, the several rents and sums of money mentioned and specified in the fourth part of the said schedule, subject to the provisions relating to the said rents expressed in the fifth part of the said schedule. And the said do hereby for themselves, their heirs, executors, administrators, and assigns, and, as a separate covenant, each of them doth hereby for himself, his heirs, executors, administrators, and assigns covenant with the said , and other the person or persons, for the time being entitled to the premises, hereby demised in reversion expectant on this lease to the effect and in the manner expressed and set forth in the sixth part of the said schedule. And the said , as to his own acts and deeds, and so as to bind, as far as he can or may, his successors in title, but without being answerable for the acts and defaults of such successors, doth hereby for himself, his heirs, executors, administrators, and assigns and successors in title, covenant with the said , their executors, administrators, and assigns to the effect and in the manner expressed and set forth in the seventh part of the said schedule.

And it is hereby agreed and declared that this lease is subject to the conditions and provisions expressed and set forth in the eighth part of the said schedule, and that such conditions and provisions shall be observed and performed as well by the said , or other the person or persons, for the time being entitled as aforesaid, as also by the said , their executors, administrators, and

assigns, so far as the same ought to be observed and performed by, or otherwise affect them respectively. And it is hereby declared that the schedule hereunder written shall be deemed part of these presents, and be read and construed accordingly, and in construction of the said schedule, the expression, "the lessor" shall mean and include the said , and also the person or persons for the time being entitled to the premises hereby demised in reversion expectant on this lease. And the expression, "the lessees" shall mean and include the said their executors, administrators, and assigns, except where the context may require a different construction. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

The schedule referred to by the above written indenture:—

PART I.

All the mines, beds, veins, and seams of coal, iron-stone, fire-clay, and common clay, as well opened as unopened, lying or being in or under all the lands situate in the parish of in the county of , which lands are delineated on the map or plan drawn on the last skin of these presents, and are therein distinguished by a line of red colour drawn round the outer boundary thereof.

PART II.

Liberties, powers, and privileges to be exercised and enjoyed in connection with the above mines and premises.

1. Liberty and power to dig, sink, drive, make, repair, and use all such pits, shafts, drifts, levels, sumps, water-gates, water-courses, air-gates, and other works as may be necessary or proper for search-

ing, for winning, working, and getting the mines and premises, hereby demised, and for ventilating and draining the same. The sites of such pits to be approved by the lessor.

2. Liberty and power to use and appropriate a sufficient part of the said lands adjoining such pits for depositing and heaping thereon the coals and other minerals, hereby authorised to be gotten from the said mines and premises, and all the earth, soil, and other substances dug up and brought to the surface in or about the working of the same.

3. Liberty and power to convert into coke the coal and to calcine the iron-stone, so to be gotten from the said mines and premises, and to manufacture the fire clay and common clay into bricks, whether for colliery purposes, or for sale, or otherwise.

4. Liberty and power to take, load, and carry away over the said lands, the coal, iron-stone, and fire-clay to be gotten from the said mines and premises, and the coke and bricks to be made and manufactured under the liberties and powers hereinbefore granted, and to dispose of the same at their own will and pleasure.

5. Liberty and power to erect, set up, make, and construct, and to take down and remove, and again to erect, set up, make, and construct in, upon, and over the said lands any houses for the residence of miners and workmen employed in and about the said mines and premises, sheds, engines, machinery furnaces, ovens, kilns, buildings, erections, railroads, and other roads, and works necessary or convenient for the effectual working of the mines and premises hereby demised, and the exercise of the several liberties and powers hereinbefore granted. The sites to be approved by the lessor, and in case any difference of opinion should arise between the lessor and the lessees with regard to the plan of such houses for

miners, the matter to be referred to arbitration as hereinafter provided.

6. Liberty and power to dig, work, and take stone from the said lands, for the purposes of the colliery and works hereby authorised, but not for any other purpose.

7. All other easements, rights, and privileges whatsoever usual and proper for the effectual and convenient working of the said mines and premises, and the exercise of the several liberties and powers hereinbefore granted according to the most approved custom of mining in the district.

Provided always that all pits and shafts to be dug and sunk, and all houses, sheds, engines, machinery furnaces, ovens, kilns, buildings, erections, railroads, and other roads, and works to be erected, set up, made, and constructed, and all other surface operations whatsoever to be carried on by virtue of the liberties, powers, and privileges hereinbefore granted, shall be respectively dug, erected, set up, made, and constructed in and upon such part only of the said lands as shall be selected for that purpose in the manner following: That is to say, whenever the lessees shall require the use of the surface of any land for any of the purposes aforesaid, they shall give notice thereof specifying the site proposed to the lessor or his agent, who shall, within days after receiving such notice, if he object to the site proposed, select a site for the purpose, and notify the same to the lessees, and the lessees shall be at liberty at any time within days after the selection of such site shall have been made and notified to them as aforesaid, but not afterwards, to object to the same as being improper and inconvenient for the purpose for which the same is required, and to notify such objection to the lessor or his agent. And in case of such objection being made and notified as aforesaid,

it shall be referred to the Government inspector of mines for the district to decide whether the site selected by the lessor or his agent as aforesaid is or is not a proper and convenient site for the purpose for which the same shall be required, and if the Government inspector shall decide against such site, or if the lessor or his agent shall neglect or refuse to select a site for any of the purposes aforesaid for the space of days after receiving a notice from the lessees requiring them so to do, then, and in either of such cases the site first selected by the lessees may be occupied by them as proposed. Provided also that if the Government inspector shall decline to permit the aforesaid reference to be made to him, the matter above directed to be referred to him shall be referred to arbitration under the provisions in that behalf hereinafter contained.

PART III.

Exceptions and reservations out of this lease.

Liberty for the lessor and his tenants, agents, servants, and workmen to use any railroads and other roads to be made and used by the lessees over the said lands under the authority of these presents, without paying any rent for the same ; and also liberty for the lessor to make, construct, and use, and to grant and demise to other persons the right to make, construct, and use over the said lands any railroads and other roads crossing and intersecting any railroads or other roads made and used by the lessees under the authority of these presents. Provided nevertheless that, in the exercise of the liberties hereby excepted and reserved, as little hindrance, obstruction, or damage as possible be done to the lessees, or to the exercise by them of the liberties, powers, and privileges hereby granted to them.

PART IV.

Rents reserved by this lease.

1. The certain yearly rent next hereinafter mentioned (that is to say) the yearly rent of £ for the first and second years of the term hereby granted, the yearly rent of £ for the third and fourth years of the said term, and the yearly rent of £ for the remainder of the said term. The certain yearly rent payable for the time being as aforesaid to be paid by equal half-yearly payments on the day of and the day of in every year. For and in respect of which yearly rents, the lessees may work and get in, every year, from and out of the said mines and premises, such a quantity of coal as, at the rates hereinafter mentioned, would produce for that year a tentale rent equal in amount to the said certain rent. But the said certain rent shall always be paid whether such quantities shall in fact be gotten or not.

2. The rent of for every ten* of screened coals, and for every ten of small coals (and so in proportion for any less quantity than a ten) which shall be gotten from or out of the said mines and premises over and above the quantity which the lessees are hereinbefore authorised to work and get in respect of the said certain rent.

3. The rent of for every ton of ironstone which shall be raised in the raw state from the said mines and premises, and so in proportion for any less quantity than a ton.

4. The rent of for every ton of fireclay which

* A "ten" is a measure of quantity only employed (as in this lease) for the purpose of determining the amount of rent to be paid by the lessees of mines to the lessor. It is confined to the north of England.

shall be raised in the raw state from the said mines and premises (except fireclay used by the lessees in and about the erection of buildings for colliery purposes under the liberties and powers hereby granted, and which fireclay they are hereby authorised to use for such purposes rent free).

5. The rent of for every 1000 of common bricks made with clay raised or gotten from or out of the said mines and premises (except bricks used by the lessees in or about the erection of buildings for colliery purposes under the liberties and powers hereby granted, and which bricks they are hereby authorised to make and use for the purposes aforesaid rent free).

All which rents for coal, ironstone, and bricks, 2ndly, 3rdly, 4thly, and 5thly, above reserved, shall be paid respectively on the day of and on the day of , in every year, for and in respect of the coal, ironstone, and fireclay raised or the bricks manufactured during the then preceding half year.

6. A yearly rent for and in respect of every acre of land the surface whereof shall be occupied or used by the lessees under the authority of these presents, double in amount of the value per acre of the same land for agricultural purposes, at the time when such occupation or use shall commence, and so in proportion for any less quantity than an acre. The said surface rent to be paid half-yearly on the day of and on the day of in every year; the first of such payments to be made on such of the said half-yearly days as shall happen next after such occupation or use shall have commenced, and the last of such payments to be made on the half-yearly day of payment which shall happen next after such occupation or use shall have ceased, and the land shall have been restored and rendered fit for

cultivation again, or shall have been paid for at the fee simple value as provided in the Lessees' Covenant No. 14, contained in Part 6 of this Schedule. And in case any difference of opinion shall arise as to what ought to be considered the occupation or use of the surface of any land for the purpose aforesaid, or as to the day on which such occupation or use shall have commenced, or as to the amount of rent payable under such reservation, the matter in difference shall be settled by arbitration.

PART V.

Provisions relating to the said rents.

1. All the aforesaid rents shall be paid free from any deduction except for property tax.

2. For the purposes of the above reservations, a ton of coals shall be considered to contain 440 bolls or $18\frac{1}{2}$ Newcastle chaldrons of 53 cwt. each ; and the term small coal shall be considered to mean all coal which shall have passed through a screen the bars of which shall not exceed $\frac{1}{8}$ ths of an inch, as under ; and the term screened coal shall be considered to mean all coal which shall not pass through such screen.

3. All coals used by the lessees for the usual and customary purposes of the colliery, and for domestic consumption in the houses and offices of agents and workmen for the time being employed in and about the said mines and premises, shall be free from rent.

4. If in any year of the said term the lessees shall not get and raise from the said mines and premises such a quantity of coal as at the above-mentioned rates would produce for that year a tentale rent equivalent to the certain rent payable for that year, then and in every such case the lessees may in any subsequent year or years of the said term get and

raise from or out of the said mines and premises such quantity of coal as shall be required to make up the deficiency, without paying any rent for the same other than the said certain rent. But the over-workings of any preceding year or years of the said term shall not come in aid of or be applied to make good the deficiency or short workings in any subsequent year or years.

PART VI.

The lessees' covenants.

1. The lessees shall pay to the lessor the rents reserved by this lease at the times and in the manner above appointed for payment thereof, and shall also pay and discharge all taxes, rates, cesses, charges, and assessments or impositions whatsoever now or hereafter to be taxed, charged, ceased, assessed, or imposed upon or in respect of the premises hereby demised, or any part thereof, except any tax upon income or property properly payable by the landlord.

2. The lessees shall not during the said term assign, underlet, or otherwise part with the mines and premises hereby demised, or any part thereof, to any person or persons whomsoever without the license or consent in writing of the lessor for that purpose first had and obtained.

3. The lessees shall, at the expiration of one calendar month after the end of every year of the said term, pay to the lessor, for the use of himself or his tenants, full and reasonable satisfaction for the injuries or spoil which during each such preceding year shall have been committed to or upon the aforesaid lands, or upon any houses, buildings, crops, or other property thereon, by means or in consequence of the exercise of any of the liberties, powers, and privi-

leges granted by this lease; and the amount of such satisfaction shall, in case of dispute, be settled by arbitration under the provisions hereinafter contained.

4. The lessees shall at all times during the said term keep or cause to be kept at the office or counting-house of the colliery, to be situated in or contiguous to some part of the said lands, correct and intelligible books of account, upon such plan or principle as is generally adopted in such cases; which books shall contain accurate entries of the quantity of coals and other minerals wrought and brought to bank from the mines and premises hereby demised, and of all bricks manufactured under the authority of these presents. And also shall, at their own costs and charges, furnish monthly true and correct copies of such accounts, and of all bills of presentment, to the lessor or his agent when thereunto by him required.

5. The lessees shall at all times during the said term cause to be made and kept at the said office or counting-house true, correct, and intelligible plans and sections of all the said mines hereby demised, which plans and sections shall show as well the operations and workings which have been carried on as all and singular the dykes, troubles, veins, faults, and other disturbances which have been observed and encountered in such workings and operations; and all such plans and sections shall be made, amended, and filled up by and from actual surveys to be made for that purpose at the end of every period of three months; and the lessees shall, at their own costs and charges, furnish to the lessor or his agent true and correct copies of such plans and sections when thereunto required.

6. It shall be lawful for the lessor and his agents and servants, at all reasonable times during the said term, to enter into and have free access to the said

office or counting-house for the purpose of examining and inspecting the said several books of account, plans, and sections, and also all railway accounts and vouchers for carriage, and to take copies thereof, and to make extracts therefrom respectively.

7. The lessees shall keep all tubs, baskets, vessels, waggons, or other carriages by which coals and other minerals are drawn or brought to the surface of one uniform measure and size, and shall not alter the measure or size thereof without notice in writing to the lessor or his agent three calendar months at least before any alteration shall be made in the same.

8. The lessor and his agents and servants may, at any time during the said term, measure and gauge the tubs, vessels, waggons, or other carriages of the lessees used for the purposes aforesaid ; and if on any such occasion any such tub, basket, vessel, or waggon, or other carriage shall be found to be capable of carrying more than the acknowledged and specified quantity, then the lessor or his agent may stop such of them as carry over measure until the lessees shall reduce the same to the uniform and proper size and capacity. And all such tubs, vessels, and other carriages so carrying over measure shall be considered to have carried the same for three calendar months previous to such discovery, or from the last occasion of so measuring and gauging the same as aforesaid, in case such occasion shall be within such period of three months, and shall be reckoned and accounted for accordingly.

9. The lessees shall forthwith commence to sink a pit on the said lands down to the seam of coal, and shall continue the sinking thereof regularly and properly and in a skilful and workmanlike manner until the said seam shall be effectually worked and won.

10. The lessees shall at all times during the said term win and work the said mines and premises hereby demised in a proper, fair, and regular manner, and according to the most approved practice of winning and working mines of the like nature in the counties of , and with as little damage as possible to the surface and to the messuages, dwellings, walls, fences, and other property thereon. And also shall, at all places when the said mines hereby demised shall adjoin any mines not included in this lease, leave unworked within the limits of this demise a sufficient barrier not less than yards in thickness of whole coal or other mineral then for the time being in course of working, and shall not break through or thin the same without the license of the lessor or his agent in writing.

11. The lessees shall well and properly secure and keep open, with timber, stone, or other durable means, all pits and shafts to be sunk or made in the said lands, and make and maintain sufficient walls and fences round every such pit or shaft. And also shall at all times during the said term keep the said mines and beds hereby demised free from water and from foul air as far as possible.

12. The lessees shall permit the lessor and his agents, servants, and workmen, at all reasonable times during the said term, to descend any pits or shafts of the lessees into the mines and works hereby demised, and to examine the said mines and works, and make plans thereof, and afterwards to return from the same without any hindrance or interruption whatsoever; and for that purpose shall permit the lessor and his agents, servants, and workmen to use all the machinery and appurtenances employed in or about the said mines and works, and with overmen, deputy overmen, or other proper persons employed by the lessees, and acquainted with the workings

of the said mines, shall effectually assist such person or persons as aforesaid in going down any such pits and shafts, and entering into, examining, and surveying the said mines and works in manner aforesaid, and in returning to the surface.

13. The lessees shall, at the end or sooner determination of the said term, deliver up to the lessor, in good order, repair, and condition, and fit for the future workings of the said mines and premises hereby demised, all engine-houses and buildings of stone or brick, pits, shafts, water-courses, air-gates, and levels in the said mines and premises. And also all and singular the moveable machinery, works, articles, and things which shall be in, upon, or under the said land, and which the lessor shall elect to purchase under the power in that behalf hereinafter given to him. And also shall, at the end of the said term, bank up all coals at the pit, not exceeding three months' vend, in such manner as to be no hindrance to an incoming tenant.

14. The lessees shall, at or before the expiration or determination of the said term, cause to be restored to their original or natural condition all such parts of the said lands as shall have been appropriated or used for any of the purposes of this demise, or shall, at the option of the lessor, pay to the lessor the value of the fee simple of the same; such value to be estimated at thirty years' purchase of the value per acre of the same land for agricultural purposes at the time when the occupation or use thereof for the purposes of this demise shall have commenced.

PART VII.

The lessor's covenants.

1. The lessees paying the rents hereby reserved, and observing and performing the covenants and

conditions herein contained, and in their part to be observed and performed, shall and may at all times during the said term peaceably and quietly possess and enjoy the mines and premises hereby demised, and exercise the several liberties, powers, and privileges hereby conferred, without any interference by the lessor or any person lawfully or equitably claiming under him.

2. The lessees may, within the space of six calendar months after the expiration or sooner determination of the said term, carry away and dispose of all the coal and other minerals which shall have been raised and gotten from the said mines and premises during the said term, and shall not have been carried away, and may also remove for their own use the moveable machinery, articles and things belonging to or used or employed in or about the said mines and works, or such of them as shall not be purchased by the lessor under the power in that behalf herein-after contained.

PART VIII.

General provisions.

1. If the rents hereby reserved, or any of them, or any part thereof respectively, shall be behind or unpaid for the space of 40 days next after any of the days whereon the same ought to be paid, then, and so often as the case shall happen, the lessor may enter into and upon the mines and premises hereby demised, or any lands which shall, for the time being, be possessed or occupied by the lessees for the purposes of these presents, and may distrain all or any of the coal and other minerals, horses, engines, trams, waggons, whimsies, tools, implements, baskets, machines, or other the utensils, matters, and things which shall be found in or upon the same premises, and the same may take, lead, and drive, carry away and impound, detain and keep, or otherwise dispose

thereof according to law, until the rent which shall be then due, and all damage occasioned by the non-payment thereof shall be fully paid and satisfied.

2. If the rents hereby reserved, or any of them or any part thereof respectively, shall be behind or unpaid for the space of sixty days next after any of the days whereon the same ought to be paid as aforesaid, or if the lessees shall make default in observing or performing the covenants and conditions contained in this lease, and, on their part, to be observed and performed or any of them, then and in any such case the lessor may at any time thereafter, and although he may not have taken advantage of some previous default of a like nature into and upon the mines and premises hereby demised, or any part thereof in the name of the whole, re-enter, and the same have again, repossess and enjoy as of his former estate.

3. If the lessees shall be desirous, at the end of any year of the said term hereby granted, to abandon and yield up the mines and premises hereby demised, and of such their desire shall give notice in writing to the lessor, or leave such notice at his usual or last known place of abode in twelve calendar months at least before the period of such proposed abandonment, then this present lease and the term and estate hereby demised, and every clause matter and thing herein contained shall, at such last mentioned period, cease, determine, and become absolutely void to all intents and purposes whatsoever, except in respect of any previous breach or non-performance of the lessees' covenants herein contained.

4. If, at the end or other sooner determination of this demise, the lessor shall be desirous of purchasing all or any of the moveable machinery, articles and things in, upon, or under the above mentioned lands or any part thereof, and used or employed in or about carrying on and working the mines hereby demised,

or for the more convenient occupancy thereof, and shall signify such his desire to the lessees by a notice in writing to be given to them or left for them at their office or counting-house aforesaid, at least six calendar months before the expiration or other sooner determination of the said term (unless the said term shall be determined under the power of re-entry hereinbefore contained, in which case the notice may be given or left at any time within six calendar months after such determination of the said term), then and in such case the machinery, articles and things specified in such notice shall be left by the lessees and be taken by the lessor at a valuation to be made thereof, in case of any difference or dispute between the parties as to their value in the manner hereinafter provided, and the amount of such valuation, when ascertained or settled, shall be paid to the lessees within three calendar months next, after such valuation shall have been agreed upon and delivered to the parties together with interest money after the rate of £4 per cent. per annum from the time of such delivery thereof.

5. If any dispute or difference shall arise between the lessor and the lessees concerning the value of the machinery, articles and things which the lessor shall elect to take or detain as aforesaid, or the amount to be paid by the lessor in respect thereof, or touching or concerning any other matter or thing which it is hereby provided, shall be settled by arbitration in case of dispute or difference, or touching any clause, matter or thing whatsoever herein contained, or the operation or construction thereof, or any matter or thing in any way connected with these presents, or the rights, duties, or liabilities of either party in connection with these presents, then and in every such case (except where hereby otherwise expressly provided) the dispute or difference

shall be referred to arbitration in manner following, that is to say—each of the parties in difference shall appoint an arbitrator, and the two arbitrators shall appoint an umpire either at once or after difference shall have arisen between them. And in case either of the said parties in difference shall neglect or refuse to appoint an arbitrator for fourteen days after notice in writing given by the other party requiring him so to do, then and in every such case the arbitrator chosen by the party giving such notice, may, by any writing under his hand, nominate and appoint a person to act as arbitrator on the part of the person refusing or neglecting as aforesaid, and the award of the said two arbitrators or their umpire, as the case may be, shall be final and conclusive, and the submission and reference to such arbitration may, on the application of either of the parties, be made a rule of any of Her Majesty's Courts at Westminster.

No. III.

LEASE OF COAL IN A SETTLED ESTATE.

By the 19th & 20th Vic. cap. cxx. s. 2, called, An Act to facilitate leases and sales of settled estates, it is enacted that the Court of Chancery may authorise leases not exceeding in the case of minerals forty years in duration, and on condition that a certain portion of the whole rent or payment reserved, shall be from time to time set aside and invested, namely, one fourth part, when the person entitled to the receipt of the rent is himself entitled to work the minerals for his own benefit, and three fourths in other cases. Trustees are to be appointed to ensure the due application of such portions. By sect. 32

tenants for life or years, under settlement, and tenants by courtesy, or in dower, or in right of a wife who is seised in fee, may lease for twenty-one years without application to the court, upon certain conditions; but such demise must not be without impeachment for waste. Consequently such person could not lease the minerals without the sanction of the court.

The following is an extract from a lease of coals under a settled estate in Yorkshire, granted under the authority of the Court of Chancery, and the statute 19 & 20 Vict. c. cxx. In this lease the seams of coal are let at so much per acre with a minimum rent for two acres, whether the coal shall be raised or not, and with power to make up for any deficiency.

“ This indenture made the day of
&c., as to the terms and provisions thereof, with the
approbation of the Vice-Chancellor as
appears by the certificate of the chief clerk of the
said judge, dated the , &c., made in
pursuance of an order made the in the
matter of an Act passed in the 19th & 20th years of
the reign of Her present Majesty Queen Victoria,
c. cxx., intituled an Act to facilitate leases and sales
of settled estates, and in the matter of the
estate, situate in and as to the persons
who are named as lessors subject to an order of the
said court to be obtained for that purpose in the
said matter, and which order is intended to be en-
dorsed hereon. Between &c. &c. Witnesseth that
in consideration of the payments, reservations, cove-
nants, and agreements hereinafter reserved and con-
tained on the part of the said X. Y., his executors,
administrators and assigns. They, the said A. B. and
C. D. in exercise of the power for that purpose vested
in them by the said order of the do and
each of them doth by these presents grant demise Demise.

Sanction of
the Court of
Chancery.

Parcels
described.

Liberties and
powers.
Habendum.

Reservation
of rents.

and lease unto the said X. Y. all that or so much of all that mine, vein, or seam of coal commonly called the , as is lying within and under all those closes or portions of closes situated in the township of , &c. forming part of the said estates, as the same are now in the occupation of C. D. and known by the names of and containing the quantity following or thereabouts (describe the several closes and quantities) together with liberty, &c. &c. (which may be taken from the other forms) to Have and to Hold the said mine, &c. of coal and premises hereby granted and demised with the liberties aforesaid, for the full term of years thenceforth next ensuing. Yielding and paying therefor unto the said A. B. and C. D. &c. the yearly rent of (say 300*l.*) sterling as and for the price of two acres of the said mine &c. of coal, whether that quantity shall be gotten or not in any one year by equal half yearly portions on, &c., until such time as the whole of the said demised mine &c. of coal shall be paid for at the rate of 150*l.* for every acre thereof and so in proportion for any fractional part of an acre, the first payment to be made on, &c. But when such rent shall have been paid for the whole of the said mine &c. of coal, at the rate aforesaid, including the pillars hereinafter mentioned, then in lieu thereof, during the remainder of the said term, the yearly rent of a peppercorn if demanded. Also yielding and paying during the continuance of this demise in manner aforesaid unto &c. the further sum of 200*l.* for every acre of the said mine &c. of coal hereby demised, and so in proportion for any fractional part of an acre thereof, which shall be worked or gotten out of the said lands in any one year of the said term over and above the quantity of two acres so hereinbefore agreed to be paid for annually as aforesaid, the first payment of the said last mentioned rent to be made on the half yearly day which shall

next happen after such additional quantity of coal shall be gotten as aforesaid. Provided always that if the said X. Y. &c. shall not win, work, and get out of the said lands the quantity of two acres of the said mine &c. of coal in any one year, that then and so often it shall be lawful for him and them in any following year or years of the term to work, win, and carry away all such deficiency over and above the said stipulated quantity of two acres without paying any further or other yearly rent than the rent of 300*l.* aforesaid, but nothing in this proviso or these presents shall be construed to excuse or lessen the said yearly rent of 300*l.* or the rent in respect of any excess of getting as aforesaid." Then follow the ordinary provisoes and covenants, and lastly a declaration that the lessors will stand possessed of and interested in the rents, covenants, &c., reserved and entered into upon trust to apply the former and act as to the latter as shall be directed by the Court of Chancery in the matter of the Act of Parliament referred to and of the said settled estates.

Average clause.

Covenants..

No. IV.

LEASE OR GRANT OF A WAY-LEAVE OR RIGHT OF USING A RAILWAY.

This Indenture made the day of 1861,
between John Cox, hereinafter called the grantor,
of the one part, and James Ward, hereinafter called
the grantee, of the other part, witnesseth that the
said grantor doth by these presents grant and demise
unto the said grantee full licence, right and authority
for himself and his agents, workmen and servants
to use, for the purposes hereinafter mentioned, at all
times (between the hours of five in the morning and

Demise.

Subject-
matter of
the demise.

Liberties and
powers.

Habendum.

Reservation
of rent.

Covenants.

eight in the evening), all that railway extending in one continued line from A, in the parish of B, to C, in the parish of D (describe the way accurately), with liberty to pass and repass along the said line, and with all usual waggon and other carriages drawn by horses or moved by steam or other engines, of any kind whatsoever, to convey all such coal and other minerals as shall from time to time be raised by the grantee out of all that mine (describe particularly the mine, colliery, pit, or seams); and to convey all other materials and things which shall be thought necessary or proper for carrying on the said mine; and for the purposes aforesaid, to use all the fixed engines, machinery, buildings, and works belonging to the said railway. Together with all other privileges and appurtenances to the said right of way belonging. To Have and to Hold the said licence, right, and authority, and all the other premises hereby demised unto the grantee, from the day of 1861, for the full term of years therein next ensuing. Rendering and paying therefor, every year, by four equal quarterly payments, on the usual quarter days, the sum of pounds, the first quarterly payment to be due and payable on the 25th day of March now next ensuing. And the said grantee covenants with the said grantor that he, the said grantee, will pay to the said grantor the rent aforesaid at the times aforesaid, and also will defray all outgoings, rates and taxes chargeable by law upon the premises. And also shall at all times during the said term permit the said grantor and all persons duly authorised by him to use and enjoy the said railway for any similar purposes, with as little interruption as possible, and shall accordingly enter into and adopt all reasonable arrangements, which shall be proposed from time to time by the said grantor, or other persons aforesaid, in

that behalf. And also shall at all times do as little injury as possible to the said railway, and the sides, rails, fences, and drains thereof, and the buildings, works, and property connected therewith. And also shall from time to time during the said term, except during the last year thereof, contribute his just share of such reasonable costs as shall be required to be incurred for the laying of new rails, or the necessary repair and support of the said railway, and of all the sides, rails, fences, drains and walls belonging thereto, and of so much of the engines, rollers, ropes, buildings, machinery, and works held therewith as shall be used and enjoyed by the said grantee in common with any other persons whomsoever. And also shall and will at all times during the said term keep and preserve the said railway, buildings, fixed engines, machinery, rollers, ropes and works hereby authorised to be used and enjoyed in common as aforesaid in good repair, and fit for the purposes of the rights and liberties hereby granted and demised. Provided always and it is hereby agreed that if at any time during the term the said grantee shall neglect or refuse to perform any of the covenants and agreements in this deed contained on his part to be observed, then it shall be lawful upon any such breach for the said grantor by notice in writing, signed by him and delivered to the said grantee, or left at his usual or last place of abode, to declare that these presents and the right and liberty thereby granted shall thenceforth determine, and therefore these presents shall forthwith become absolutely void, except in respect of any previous breach of the covenants and agreements herein contained. Provided also—(Here may be inserted powers to distrain on non-payment of rent, a covenant by the grantor for quiet enjoyment, and a proviso similar to that

Power to
grantor to
terminate
the lease
for breach of
covenant.

at the end of Form No. I, by which the covenants, agreements, &c., shall be declared to bind the heirs &c. in like manner as if they had been respectively named after the words grantor and grantee.) In witness whereto, &c.

No. V.

VARIOUS COVENANTS AND PROVISOES.

Clause A.

To provide
for the bank-
ruptcy, &c.,
of the lessee.

This clause may be added to the covenant to pay the rent: "And if the said (lessee) his executors, &c., shall be adjudged a bankrupt, or make any composition with his or their creditors, for the payment of his or their debts, or take the benefit of the statutes for the relief of insolvent debtors, then it shall be lawful for the said (lessor), his heirs or assigns, to re-enter into and upon the said demised lands, colliery, seams of coal, and premises hereby demised and re-possess and enjoy the same, as if these presents had not been made."

Clause B.

Provision
for requiring
trials
through
faults and
dislocations.

This is a proviso to meet the contingency of a fault or dislocation being met with: "Provided also, &c., that if in working the said seam any fault or dislocation shall at any time be discovered, the said (lessee) if required, shall at his own expense make proper and reasonable trials through such faults or dislocations for the purpose of ascertaining whether or no the seam so interrupted is workable and marketable beyond such fault or dislocation, and if such seam shall be found workable and marketable, shall at his own expense continue the working thereof."

Clause C.

This covenant is to prevent excavations under buildings on the surface under which the seams demised are situate: "And also that the said (lessee), &c., shall not unless authorised to do so by the lessor, extend his workings under any farm or other house or buildings now or hereafter to be erected on the lands delineated on the map hereto annexed, nor within the distance of ten yards on each side thereof; but in the event of any damage to such erections by the act or default of the said (lessee), &c. in violation of this stipulation reasonable compensation shall be made in respect of the same, and the said (lessor), &c. shall be kept indemnified against any suit or suits at law for damages in respect of the same."

Covenant
not to work
under
buildings.

Clause D.

This is a proviso to enable the lessee to work coals in any adjoining mines, and *vice versa*, by access thereto from the seam demised: "Provided always, &c., that the said (lessee), &c. shall have liberty and licence to make an outstroke into any adjoining mines, and by means thereof to work any minerals therefrom upon payment of a way-leave in respect thereof of (say) 1d. per ton, but so that such outstroke be so constructed and driven as that the said (lessee) at his own expense shall not be precluded from effectually stopping up the same by sufficient frame-dams or other dams to be placed therein at the expiration or determination of this term, and also shall have liberty, subject to the same condition as to dams, to work any portion of the seams hereby demised by means of an instroke from any adjoining property; but both the said liberties and powers to be subject to the further condition

Power to
lessee to
make out-
strokes and
instrokes, to
and from
adjoining
workings,
with bound-
ary marks.

that the said (lessee), &c. shall cause distinct and sufficient marks to be made and maintained on the roof or side of every level heading or stall that may cross and pass over the boundary of the seams of coal hereby demised into or out of any adjoining workings so as to enable the said (lessor), &c. to determine and check the accuracy of the surveys kept by the said (lessee), &c."

Clause E.

Another
form of an
average or
deficiency
clause

"Proviso. Provided always, and it is hereby agreed and declared by and between the parties hereto that after the said dead or certain rent of shall become payable as aforesaid notwithstanding the reservations hereinbefore contained of the said royalties on minerals no such royalties shall be actually paid or payable in any year unless the amount of such royalties in that year exceed the amount of the said dead or certain rent, it being the true intent of the parties hereto that in case in any current year of the term hereby granted the amount of the royalties on minerals wrought in such year shall fall short of the dead or certain rent payable for such year, the said dead or certain rent only and no royalty shall in that year be actually paid, but that in case the royalties shall in any current year of the term hereby granted exceed the said dead or certain rent payable for such year, then so much and no more of the said royalties as shall exceed the amount of the said dead or certain rent shall in such year be actually payable in addition to the said dead or certain rent."

Provided also, and it is hereby further agreed and declared that if in any half-year of the said term hereby granted after the said dead or certain rent shall have become payable as aforesaid, the said A. B., his executors, &c., shall not work, obtain, or bring to the

surface from or out of the mines hereby demised such a quantity of minerals as shall be sufficient to produce royalties at least equal in amount to the said dead or certain rent and shall in either of the next succeeding half-years' work obtain and bring to the surface such a quantity as will be sufficient to produce royalties in excess of such dead or certain rent, then and in such case and so often as the same shall happen, it shall be lawful for him or them to retain and keep back as much of the royalties otherwise payable thereon as will be equal to the loss sustained by such deficient workings.

Yet so nevertheless, that during the said term there shall always be paid at the least the dead or certain rent hereby reserved, whatever may be the quantity wrought, and so that no deduction for the deficiency in any half-year be made except in one or either of the next succeeding half years.

Clause F

Provided also, and it is hereby further agreed and declared that although in the process of working the minerals hereby demised there may be by arrangement between the said A. B., his executors, &c., and his and their workmen, or according to custom, or by breakage or otherwise sent out under the denomination of "Large Coal" as great a proportion of small coal as 120lb. in every ton known as colliers' ton of 2,640 pounds of coal passed over the weighing machine or a still greater proportion, yet nevertheless the royalty hereinbefore reserved on large coal shall be payable upon every 2,520 pounds of every such ton, and the royalty hereinbefore reserved on small coal upon the remaining 120 pounds thereof, whatsoever may be the actual proportions of large and small coal respectively therein, it being the intention of the

Breakage clause.

parties hereto that the said A. B., his executors, &c., shall not for any cause or upon any pretence be entitled to the benefit of the small coal royalty hereby reserved upon a greater proportion than 120 pounds of every 2,640 pounds of coal worked and obtained as large coal and that no abatement of royalty or allowance on weight either in respect of breakage or upon any pretext whatever shall be made in regard to any minerals other than coal.

Clause G.

Definition of
large and
small coal.

And it is hereby agreed and declared that the term large coal shall include all coal that will not pass through a screen the bars of which are one inch asunder, and the term small coal shall include all coal that will pass through such a screen.

No. VI.

THE FRENCH LAW OF MINES.

The following pages furnish a brief outline of the leading enactments of the French Code as relates to minerals. As to the property in them there has been some diversity in the views of the Legislature at different periods, but at present no one can search for minerals except the owner of the land, or by the authority and concession of the Government. The great distinction between the law of England and France is this, that in England the proprietor is the absolute owner, and may leave his minerals untouched for ever; while in France the State may step in and concede the power to work for coal or ores upon certain conditions *without the landowner's consent*. If the person who is desirous of searching cannot come to terms with the proprietor of the surface, he presents

a petition to the préfet of the department, setting forth all particulars and accompanied with a plan. Public notices of the demand are then published in various places during four months, after the lapse of which the préfet proceeds to adjudicate. Every facility is given to opponents, whether public bodies or private individuals, up to the time of the signature of the concession. If the préfet determines to accord the claim he also considers the question of indemnity to the landowner, and takes the evidence of skilled surveyors, &c., nominated by the claimant and the proprietor. In the meantime the préfet reports to the Minister of Public Works, who after consulting the "Council of Mines," and again hearing the opposing parties, if they desire it, draws up the decree of concession. It is held that this decree includes all necessary powers for making such surface roads as are essential to the works. The landlord, however, is entitled to double the rent previously received in the cases where the surface can be restored and the experimental works last only for a year. In other cases of permanent damage he may insist upon the purchase of the land, which is to be valued by experts upon the basis of doubling the value of it at the time of the commencement of the works. And if in the progress of the works any damage is done by water or otherwise to a neighbouring mine, the law provides for the calculation and enforcement of compensation. As to matters of dispute which may rise subsequently, they are to be decided by the ordinary tribunals. The grantee of the concession is also liable to two payments to the Treasury, one fixed, and the other fluctuating. The fixed payment is an annual one, at the rate of ten francs for every square kilomètre* of surface. The fluctuating payment is an-

* A kilomètre is 1093 yards in length.

nually determined by the Budget, like other public taxes, but must not exceed 5 per cent. of the net produce. The grantee is entitled to compound for this tax, if he desires to do so. In addition to these imposts the grantee is bound to pay a further per-cent-age to form a "deficiency fund," to be disposed of by the minister in aid of the grantees in the event of proved losses or accidents. With regard to the indemnity to the proprietor in respect of the minerals extracted, his claim is clearly recognised by law. The State, no doubt, regards the projected mine as a new and special property created by the decree of concession and distinct from the ownership of the land. Upon this principle the State reserves to itself the right of regulating this special property in its own way. Since the year 1842 it is decreed that a clause to be inserted in the schedule of charges shall fix the dues as between the grantee and the landowner. These payments, or (as we should call them) "royalties," may be rendered in kind or in money. In the event of contention as to amount, the Government looks to precedent and the custom of the country. Thus in some places it sanctions the render to the landowner of a certain proportion of the coal won; in others it authorises the payment of a centime or fraction of a centime for every hectolitre of coal extracted; or of five or ten centimes for every hectare of surface.* The question of amount is in the first instance referred to the cognizance of the préfet; but it may be disputed again before the Minister of State, and be finally determined by him. The claim of the discoverer of minerals is also recognised, but his petition goes at once to the Emperor himself.

With regard to the supervision of mines the law requires that the occupier should register his domi-

* Hectolitre, not quite 3 bushels; hectare, about $2\frac{1}{2}$ acres.

file in the office of the préfet. Whenever the workings are likely to affect the public safety, or that of the workmen, or the preservation of the soil and the dwelling-houses on the surface, he is required to give immediate notice to a public officer called the engineer of mines, who acts under the orders of the director-general for the purpose of enforcing the laws, and also to the mayor of the commune. The engineer proceeds to the mine, draws up a written statement, and transmits it to the préfet, with suggestions as to the proper course to be adopted under the circumstances. The préfet is to act according to his discretion. But if the danger is imminent and serious the engineer is to serve requisitions at once upon the local authorities for such supplies and aid as he deems necessary. On the occurrence of serious accidents either to the works or the workmen, the occupier is to give notice to the mayor and the agent of the mines. The mayor draws up a report, and in conjunction with the engineer, takes all suitable steps to meet the emergency. Any expenses thus incurred to be defrayed by the occupier.

If the engineer discovers that part or the whole of the workings is in such a state as to compromise the safety of the miners, it becomes his duty to report to the préfet. The latter hears the parties concerned, and if the occupier admits the alleged facts the workings are ordered to be closed. If the facts are disputed, the préfet hears the evidence of skilled witnesses and decides to the best of his ability.

The grantee is not permitted to sell or sublet the property in lots without the sanction of the Government. So also if he wishes to abandon the workings, he is required to send in plans and give three months' notice to the administration of mines before he can legally do so.

The grantees are the absolute owners of the con-

ceded property which is classed as "immeable" (i.e. real estate), and even the horses and all the machinery are placed under the same head of property. The grantees are held liable to prosecute the works in a satisfactory manner. Their works must be in operation within one year, at the latest, from the date of the concession, and they must be continued without interruption. It is deemed important that year by year detailed plans of the last year's workings should be registered in the office of the préfet, on a scale of one mètre to a thousand. Every grantee is prohibited from working under lands adjoining dwelling houses and one hundred mètres therefrom.

In order to secure an accurate knowledge of the mineral resources of the Empire, and of the actual working of mines, the Government has established schools in which students from the Polytechnique School are specially instructed in mining. They are not admitted to the degree of "engineer" until they have passed a searching examination. They are subsequently employed under the orders of the inspectors-general and the engineers-in-chief in the mineral districts. It is their duty to give advice to the préfets, and to suggest measures of safety to the magistrates and the proprietors, and to inform the authorities of all infractions of the mineral code which come to their knowledge. In short, it appears that the Government engineer of mines is by far the most important office connected with them, and that he initiates almost every proceeding. Questions relating to the property, payments, and drainages are determined by the ordinary civil tribunals. And charges of fraudulent working and breaches of special laws are dealt with by the tribunals of correctional police.

The General Council of Mines has a very large jurisdiction over mineral interests. We have stated that the question of concession may be carried up

before this high court, and they may also be consulted upon nearly every important matter arising out of mineral disputes. The Imperial taxes are paid to the receiver of the commune, and accurate tables of the sums payable are to be prepared and published annually. The duty of assessing each mine in respect of the proportionate payments due as a tax or royalty to the Imperial treasury is cast upon the préfet and his council. But he is furnished with definite instructions for making the assessment, of which the following are the leading propositions. The value of the gross produce is ascertained partly by actual sales and partly by estimate and comparison of prices so far as relates to unsold produce. From this sum are to be deducted the wages of workmen; maintenance of horses; expenses of keeping up the workings, shafts, &c., underground; motive power and machinery; repair of buildings; surface roads; the cost of the first construction of pits, headings, and other works of art; the first cost of machinery, of buildings, and of ways; and, lastly, the office expenses. The proportionate payment to the state will always be made upon this basis, to be re-adjusted according to the facts of every year. For the first year of the concession, however, it is to be fixed by an estimate of the probable production. Since the principles of valuation and of deductions were first laid down, some further items of reduction have been recognised, the chief of which are the items of expenses incurred, in aid to injured workmen, the price paid for lands essential to the works, and damages for injuries by water or other mining operations.

By a more recent decree also, an officer, called "garde-mine" or mine-keeper, has been appointed, whose duty it is to act under the engineer in enforcing the laws, and proving any infractions of them. This officer is held responsible for taking all needful

measures in cases of urgent danger; for verifying the plans of the grantee; and for executing certain trigonometrical operations and works of examination for the purpose of ascertaining the situation of useful minerals.

With regard to the qualification of sub-officers, it is decreed that no man shall act as master miner or overman of works who has not worked as a miner, or mechanician underground for three consecutive years at least. Every miner and workman is to be supplied with a small book of rules, and is to conform to the orders of the Government. No workman is to be employed who cannot produce his book, showing his lawful release from his last employer. A registry of employés is to be kept at the mayor's office. Besides these precautions, an exact daily return of all persons employed is to be kept at the works and returned to the mayor. It is part of the duty of the engineers to verify the roll or lists of workmen in their presence, and the mayor is empowered to do the like. No child under ten years of age is allowed to work underground or descend the shaft. No tipsy or sick workman is allowed to go down, nor any stranger without special permission. Every workman, who, by disobedience or insubordination, compromises the safety of persons or property, is to be prosecuted under certain provisions of law applicable to the case.

This short outline will serve to show how widely the French mineral laws differ from our own. There the state is empowered to interfere at every stage of mining business, and exercises a kind of prerogative power over the mineral tracts and the lands under which they lie. In Great Britain the landowner is the absolute master of the subjacent minerals, and the state has no power to interfere with him in letting or refusing to lease them. There is, however, a

growing tendency, on the part of our legislature, to interfere in the regulation of mines in the interest of the safety of large bodies of skilled workmen. It would be interesting to enquire what are the relative advantages of the two systems, and their results in accidents and loss of life, but I have not the means of comparing them. The outline of French law is taken from a valuable work by M. Dufour, an advocate of the bar of Paris.



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